

# Exhibit 4

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
1-4

Page 1		Page 3
1	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA NORTHWESTERN DIVISION 3 CASE NO.: 4:150-cv-133 4 NORTHERN BOTTLING CO., INC., 5 Plaintiffs, 6 v. 7 PEPSICO, INC., 8 Defendant. 9	1 I N D E X 2 TESTIMONY OF DEREK LEWIS 3 Direct Examination by Mr. Ragain.....5 4 Cross-Examination by Mr. Quinn.....138 5 Redirect Examination by Mr. Ragain.....142 6 CERTIFICATE OF REPORTER.....144 7 ERRATA SHEET.....145 8 9 * * * * * 10 E X H I B I T S 11 (None marked.) 12 13 14 * * * * * 15 S T I P U L A T I O N S 16 It is hereby stipulated and agreed by and 17 between counsel present for the respective parties, and 18 the deponent, that the reading and signing of the 19 deposition are hereby RESERVED. 20 21 22 23 24 25
Page 2		Page 4
1 A P P E A R A N C E S: 2 3 JAMES M. RAGAIN, ESQUIRE 4 OF: Ragain & Cook, P.C. 3936 Avenue B, Suite A-2 4 Billings, Montana 59102 jim@lawmontana.com 5 6 Counsel for the Plaintiff 7 THOMAS B. QUINN, ESQUIRE 8 OF: Riley, Safer, Holmes & Cancila, LLP 70 West Madison Street, Suite 2900 Chicago, Illinois 60602 tquinn@rshc-law.com 10 Counsel for the Defendant 11 12 13 ALSO PRESENT: 14 Erik Nelson, Videographer 15 Langer Gokey, Northern Bottling Representative 16 17 18 19 20 21 22 23 24 25	1 P R O C E E D I N G S 2 * * * * 3 THE VIDEOGRAPHER: This is Disc No. 1 to the 4 video recorded deposition of Derek Lewis in the 5 matter of Northern Bottling Company, Incorporated 6 versus PepsiCo, Incorporated being heard before the 7 United States District Court for the District of 8 Northern -- of Dakota, Northern -- Northwestern 9 Division, Case No. 4:150-cv-133. 10 This deposition is being held at 3780 [sic] 11 Sand Lake Road, Orlando, Florida 32819 on June 19, 12 2017 at 8:33 a.m. My name is Erik Nelson and I'm 13 the videographer. The court reporter is Dayna 14 Jones. 15 Counsel, will you please introduce yourselves 16 and affiliations and then the witness will be 17 sworn? 18 MR. RAGAIN: Jim Ragain, I represent the 19 plaintiff Northern Bottling. 20 MR. QUINN: Tom Quinn, I represent PepsiCo, 21 the defendant in the case, as well as Mr. Lewis, 22 the witness. 23 And let me state for the record that pursuant 24 to the protective order that has been entered by 25 the court in this case, we're designating the	

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
5-8

Page 5	Page 7
<p>1 transcript of this deposition, the contents of the 2 deposition, as confidential until such time as 3 Mr. Lewis has the opportunity to review the 4 transcript and make specific designations. 5 (A discussion was held off the record.) 6 DEREK LEWIS, 7 was examined and testified as follows: 8 DIRECT EXAMINATION 9 BY MR. RAGAIN: 10 Q. Good morning, Mr. Lewis. 11 A. Good morning. 12 Q. My name is Jim Ragain. I represent -- 13 MR. RAGAIN: Thank you very much, Tom. 14 Q. -- Northern Bottling. How long have you 15 worked for PepsiCo? 16 A. Twenty-nine years. 17 Q. And could you please tell me what positions 18 you've held there and how long you were in each of those 19 positions? 20 A. I've held a variety of sales and general 21 management roles throughout my career. I started out as 22 a management trainee back in 1988 and progressed my way 23 through the organization, again, through -- 24 THE COURT REPORTER: I'm sorry, can you slow 25 down a little bit, please. Thank you.</p>	<p>1 A. I know who he is, yes. 2 Q. Okay. And how do you know Mr. Gokey? 3 A. Through the relationship of Franchise Bottlers 4 and PBC. 5 Q. Have you met him before? 6 A. Uh-huh. 7 Q. And you mentioned that you -- your title is 8 with respect to PBC. What's the difference between PBC 9 and PepsiCo? 10 A. PBC is the distinct direct, the DSD 11 organization for North America Beverages. 12 Q. And what is PepsiCo? 13 A. The parent company, oversees the sector of 14 North America Beverage. 15 Q. And do you know what this case is about, sir? 16 A. Yes. 17 Q. What is it about? 18 A. An alleged transshipment issue in the Northern 19 Bottling territory. 20 Q. And you say "alleged," why do you say 21 "alleged"? Are -- is it your understanding that the 22 transshipment may not be happening? 23 A. Alleged in the fact that I know the situation 24 has been under investigation for quite some time. I'm 25 not intimate with all the specific facts of it, but my</p>
<p>1 THE WITNESS: Okay. I started in 1988 as a 2 management trainee and progressed through a variety 3 of selling and general management roles throughout 4 my career throughout the country up until my 5 current role, which is SVP/GM of North America 6 field operations. 7 BY MR. RAGAIN: 8 Q. For PepsiCo, PBC -- 9 A. PBC. I run -- yeah, I'm the lead sales GM for 10 PBC. 11 Q. And they stuck you here in Orlando? 12 A. I previously served in the southeast BUGM role 13 prior to the role I was in, so I was already located in 14 Orlando. So taking on the new assignment five and a 15 half years ago, there was no need for me to have to 16 relocate. 17 Q. Are you familiar with Northern Bottling? 18 A. Uh-huh. 19 Q. How so? 20 A. Just a franchise organization, Pepsi Bottling 21 organization. 22 Q. Have you ever been to Northern Bottling's 23 facility? 24 A. I have not. 25 Q. Do you know Mr. Gokey?</p>	<p>1 understanding of it, it's alleged. And I know that, you 2 know, we, to this point, don't transship product in his 3 area. I don't have any facts that suggests that I had a 4 vehicle or asset in Northern Bottling territory. 5 Q. And when you use the word "I," you mean PBC? 6 A. PBC, correct. 7 Q. Do you know, from January 2015 to the present 8 time, a third-party distributor by the name of Core-Mark 9 International has been selling PepsiCo CSD products into 10 Northern Bottling's exclusive territory? 11 A. I heard that was alleged or heard that was 12 certainly brought to our attention, yes. 13 Q. Have you heard any statements or evidence or 14 recitations that that is not occurring? 15 A. Say that again. 16 Q. Have you heard any statements, evidence, 17 recitations, representations that -- that that, in fact, 18 is not occurring? 19 A. I have not -- I've -- I -- I know through 20 talking to my people we have not shipped any product 21 into Northern Bottling territory. 22 Q. Tell me what you did to prepare for this 23 deposition today, sir. 24 A. I had a series of meetings with our legal 25 counsel.</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
9-12

	Page 9		Page 11
1	Q. How many?	1	A. A territory -- exclusive territory in terms of
2	A. How many meetings?	2	2 what?
3	Q. (Nods head.)	3	Q. In terms of an EBA.
4	A. Several.	4	A. All my assumptions would be the boundaries of
5	Q. More than five?	5	5 where that independent bottler has the rights to
6	A. Two to three. No, less than five.	6	6 distribute the portfolio.
7	Q. What documents did you review, if any?	7	Q. The exclusive rights?
8	MR. QUINN: Let me just instruct the witness	8	A. For certain products, yes.
9	to the extent that I selected items to give you to	9	Q. And do you know what products Northern
10	review, that's covered by the attorney-client	10	Bottling has the exclusive rights to --
11	privilege and the work product, so you should not	11	A. I'm not familiar with the -- with their EBA,
12	disclose anything that -- that your attorney has	12	what the extent of the details of their EBA would be.
13	selected for you to review.	13	Q. Are you aware -- aware of any exceptions to
14	Aside from that, you may answer Mr. Ragain's	14	14 their EBA or conditions?
15	question.	15	A. Not --
16	THE WITNESS: We reviewed a variety of	16	MR. QUINN: Object to form of the question.
17	documents to prepare for my discussion.	17	THE WITNESS: Okay.
18	BY MR. RAGAIN:	18	MR. QUINN: You may answer.
19	Q. Okay. Did you review any documents, other	19	THE WITNESS: I'm not -- I'm not that intimate
20	than documents shown to you by Mr. Quinn?	20	20 with the details of those arrangements.
21	A. Relative to this? Not that I'm aware of.	21	BY MR. RAGAIN:
22	Q. Any digital documents or -- or digital	22	Q. To your knowledge, does Northern Bottling have
23	materials, e-mails, things like that?	23	an exclusive territory for the distribution of PepsiCo
24	A. That I reviewed prior to today's discussion?	24	bottle and can CSD products?
25	Q. Yes.	25	MR. QUINN: Object to the form of the
	Page 10		Page 12
1	A. That were not part of what we may have	1	question.
2	discussed? I'm not aware.	2	THE WITNESS: Rephrase that again, please.
3	Q. All right. Mr. Lewis, what's an independent	3	BY MR. RAGAIN:
4	bottler?	4	Q. To your knowledge, does Northern Bottling have
5	A. A bottler that is not company owned. It owns	5	an exclusive territory within which it has the exclusive
6	an operation, independently owned operation outside of a	6	rights to distribute PepsiCo bottle and can CSD
7	7 company-owned bottling operation.	7	products?
8	Q. And when you say "company-owned," do you mean	8	A. To the extent -- to the extent that all the
9	PBC --	9	9 legalities you're stating, my understanding would be
10	A. Correct.	10	10 they have -- they have a boundary, which they're allowed
11	Q. -- PepsiCo or both?	11	11 to sell certain PepsiCo products they're designated for
12	A. PBC.	12	12 their geography. That -- that's -- that's the extent.
13	Q. PBC?	13	I'm not sure what you want to know, want me to answer
14	Northern Bottling, would they then be an	14	14 beyond that. I don't -- I don't have a feel for what
15	independent bottler?	15	15 you're asking.
16	A. My assumption.	16	Did it have a boundary? Is there a boundary?
17	Q. What's an EBA?	17	Yes, there's a boundary. Are there products that are
18	A. It's a bottling agreement.	18	18 tied to their boundary? Yes. To what extent the
19	Q. Between?	19	19 products are, I don't have the intimacy of all those
20	A. Pepsi -- Pepsi and independent bottling	20	20 details. I don't know.
21	organizations, independent bottlers.	21	Q. Okay. How does an independent bottler obtain
22	Q. Do you know what the acronym or what the	22	an exclusive territory for the sale of PepsiCo bottle
23	initials stand for?	23	23 and can CSD products?
24	A. Executive bottling agreement.	24	A. I wouldn't -- I would not be aware of the
25	Q. What's an exclusive territory?	25	25 legal process of obtaining franchise rights for

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
13-16

<p style="text-align: right;">Page 13</p> <p>1 distribution of products of PepsiCo.</p> <p>2 Q. Well, aside from -- are you an attorney, sir?</p> <p>3 A. Not even close.</p> <p>4 Q. Okay. I'm -- I'm not going to ask you any</p> <p>5 questions that require a legal opinion. All I want to</p> <p>6 know is what your knowledge is as a lay person in your</p> <p>7 executive position with PBC?</p> <p>8 A. Okay.</p> <p>9 Q. Fair enough?</p> <p>10 A. Uh-huh.</p> <p>11 Q. So, to your knowledge, how does an independent</p> <p>12 bottler obtain an exclusive territory for the sale of</p> <p>13 bottle and can --</p> <p>14 A. I'm -- I'm not aware of that process. I've</p> <p>15 worked in the company on operations for 29 years. I've</p> <p>16 not spent any of my career working on franchise</p> <p>17 agreements or anything thereof.</p> <p>18 Q. How does an independent bottler for the -- in</p> <p>19 the PepsiCo system keep its exclusive territory? What</p> <p>20 does it have to do to maintain that relationship?</p> <p>21 A. Similar answer. I'm not necessarily aware of</p> <p>22 all the legal components. I know you asked me -- I'm</p> <p>23 not a lawyer and I'm not trying to suggest it was a</p> <p>24 legal question, but I would imagine that you have an</p> <p>25 agreement and as long as you comply with your agreement,</p>	<p style="text-align: right;">Page 15</p> <p>1 kept score on exactly the pluses or minuses.</p> <p>2 Q. Could you tell me, sir, what you know about</p> <p>3 the history of PepsiCo and its independent bottler</p> <p>4 network?</p> <p>5 A. What do you mean "history"? What do you mean</p> <p>6 when you say "history"?</p> <p>7 Q. Any- -- anything that's occurred prior to</p> <p>8 today with respect to the relationship between</p> <p>9 independent bottlers and PepsiCo?</p> <p>10 MR. QUINN: I'm going to object to the form of</p> <p>11 that question. That's so broad and vague. I don't</p> <p>12 know how anyone can answer.</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. You know what I mean by the word "history,"</p> <p>15 don't you? Do you know what the --</p> <p>16 A. I'm not sure I know what -- I know what you</p> <p>17 mean by history the way you phrase the question. I</p> <p>18 don't --</p> <p>19 Q. Do you know how many -- do you know what year</p> <p>20 PepsiCo first started using an independent bottler</p> <p>21 network?</p> <p>22 A. I don't. I mean, I assume back when it was</p> <p>23 discovered, but I -- I -- I don't have that -- I assume</p> <p>24 that's how we -- PepsiCo -- Pepsi grew its sales,</p> <p>25 starting through a franchise network. So yeah, if you</p>
<p style="text-align: right;">Page 14</p> <p>1 you know, you can maintain your status as a -- as a</p> <p>2 bottler.</p> <p>3 Q. Have you ever read any of the EBAs --</p> <p>4 A. No, sir.</p> <p>5 Q. For how long, to your knowledge, has PepsiCo</p> <p>6 utilized a network of independent bottlers to distribute</p> <p>7 bottle and can CSD products?</p> <p>8 A. Throughout the entire time I worked for the</p> <p>9 company.</p> <p>10 Q. Do you know if that preceded your time with</p> <p>11 the company?</p> <p>12 A. I would assume it did. When I started with</p> <p>13 the company, there were already franchise bottlers in</p> <p>14 place, so I would assume, yes, before 1988 we were doing</p> <p>15 business with -- the company was doing business with</p> <p>16 franchise bottlers, yes.</p> <p>17 Q. Do you know, has the number of franchise</p> <p>18 bottlers increased or decreased since 1988?</p> <p>19 A. I haven't kept score on that, to be honest</p> <p>20 with you.</p> <p>21 Q. And when -- when I use the phrase, as -- as</p> <p>22 you have, franchise bottlers, is that the same, in your</p> <p>23 mind, as independent bottlers?</p> <p>24 A. Correct. There certainly have been a number</p> <p>25 of transactions between 1988 and 2017, but I haven't</p>	<p style="text-align: right;">Page 16</p> <p>1 want to go back to the late 1800s, I would assume that's</p> <p>2 where -- that's where things got started, yes.</p> <p>3 Q. And I want -- and that's what I'd like to</p> <p>4 know. What do you know about that relationship over</p> <p>5 time between independent bottlers and PepsiCo?</p> <p>6 A. The extent that the independent bottlers were</p> <p>7 a vital component of building the company -- the</p> <p>8 Pepsi-Cola brand throughout the network, throughout the</p> <p>9 country over the years, that's about all I would be able</p> <p>10 to tell you.</p> <p>11 Q. And why do you say "a vital component"? What</p> <p>12 do you mean by that?</p> <p>13 A. Well, 'cause -- I mean, that's how it started.</p> <p>14 My -- my sense is that's how the business got started,</p> <p>15 how Pepsi became -- became available throughout most of</p> <p>16 the territories in the U.S. and the, you know, over time</p> <p>17 it evolved and migrated to different type of</p> <p>18 relationships, different type of operations and</p> <p>19 consolidations well before I got in the business. But</p> <p>20 that would be the extent of, if you talk about history,</p> <p>21 my recollection of it.</p> <p>22 Q. And since you've been with the company, can</p> <p>23 you tell me what consolidations have occurred with --</p> <p>24 with respect to PepsiCo and the independent bottler</p> <p>25 network?</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
17-20

Page 17	Page 19
<p>1 A. Well, I mean, you know, it's obvious we 2 were -- I was with PBG, we were a bottler, publicly 3 traded bottler, so we were a publicly traded bottler, 4 along with PepsiAmericas and we were both acquired by 5 PepsiCo. That was obviously a major transaction that 6 occurred in the last, you know, six or seven years. 7 Other than that, there could have been some other 8 territory swaps that have happened in that window of 9 time. And there's been some, you know, selling of 10 franchises back to the corporation in some cases, from 11 what I recall. So again, there's been a number of 12 transactions, the most notable one was the merger and 13 acquisition of PBG and PAS.</p> <p>14 Q. And when did that occur?</p> <p>15 A. About 2010.</p> <p>16 Q. And you said you were an employee of PBG --</p> <p>17 A. Correct.</p> <p>18 Q. -- at the time?</p> <p>19 Okay. Tell me about, I mean, if you can, just 20 the formation of PBC from -- it's my understanding, PBC 21 was formed via PAS and PBG; is that correct?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. How did the transaction -- just 24 generally speaking, I'm not asking for a legal opinion, 25 but what occurred to form --</p>	<p>1 A. From my understanding, Pohlrad. 2 THE COURT REPORTER: What was the name? 3 THE WITNESS: Bob Pohlrad.</p> <p>4 BY MR. RAGAIN:</p> <p>5 Q. The Pohlrad family?</p> <p>6 A. Family, yes.</p> <p>7 Q. And -- and PBG was what kind of an entity 8 prior to the formation of PBC?</p> <p>9 A. PBG was a publicly traded bottler, 10 independent, publicly traded bottler.</p> <p>11 Q. Okay. And it's my understanding, generally 12 speaking, again, not speaking in terms of legalities, 13 that those two entities were purchased by PepsiCo?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And -- and a new company was formed by the 16 name of PBC?</p> <p>17 A. PBC is the -- PBC is the -- that's our -- 18 that's the vision of North America Beverage. We all 19 came into North America Beverage. North America 20 Beverage is the sector that reports into PepsiCo. NAB 21 is what we refer ourselves to. PBC is a component of 22 NAB.</p> <p>23 Q. North America Beverage --</p> <p>24 A. It's the DSD arm of North America Beverage.</p> <p>25 Q. And do you know who -- is -- is PBC a publicly</p>
Page 18	Page 20
<p>1 A. Oh, it was a lot of work. I mean, it was a 2 lot of work. It was a lot of complexity, you know, when 3 you -- when you bring these entities together. I mean, 4 it was a fair amount of work put across the organization 5 and -- but the fact that we -- you know, we worked 6 closely with the PAS executives at the time, so, you 7 know, while -- while complex, the transition was done 8 well. The integration was done well and we adopted a 9 lot of systems and started working on synergies.</p> <p>10 Because as you imagine, they had some things 11 that were different, we had some things that were 12 different. The goal was to try to pull it all together, 13 operate as one unit and that was really the work in the 14 first, you know, 365 day- -- first year of the merger 15 was all about just making sure we were, you know, 16 working towards the same system, getting on the same 17 page, integration was job one and -- but, you know, we 18 did a great job of doing that.</p> <p>19 Q. So PAS, if my recollection is correct, is 20 PepsiAmericas?</p> <p>21 A. Yes.</p> <p>22 Q. And -- and what was PepsiAmericas prior to the 23 formation of PBC?</p> <p>24 A. They were a publicly traded bottler, yes.</p> <p>25 Q. Who owned the majority of PAS?</p>	<p>1 traded company?</p> <p>2 A. No.</p> <p>3 Q. Is it owned by PepsiCo?</p> <p>4 A. Yes.</p> <p>5 Q. And is it controlled by PepsiCo?</p> <p>6 MR. QUINN: Object to the form of the 7 question.</p> <p>8 THE WITNESS: When you say "controlled by 9 PepsiCo," what do you mean?</p> <p>10 BY MR. RAGAIN:</p> <p>11 Q. Who's the head person at PBC?</p> <p>12 A. I would be the GM of PBC and then I report 13 into Kirk Tanner, who is the president and COO of North 14 America Beverage.</p> <p>15 Q. And is -- is North America Beverage a division 16 of PepsiCo?</p> <p>17 A. Yes.</p> <p>18 Q. So would you say that you ultimately report to 19 PepsiCo personnel?</p> <p>20 A. I report in to Kirk Tanner, who was NAB who 21 reports in to Al Carey, who is PepsiCo, yes.</p> <p>22 Q. What's Pepsi Food Service, sir?</p> <p>23 A. Food service is a sales function within North 24 America Beverage and within PepsiCo for that matter.</p> <p>25 It's not a standalone, but it's a -- it's a component of</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICOJune 19, 2017  
21-24

<p style="text-align: right;">Page 21</p> <p>1 the sales organization.</p> <p>2 Q. Is it also a component of PBC?</p> <p>3 A. Uh-huh. Yes.</p> <p>4 Q. So Pepsi Food Service is a unit or division</p> <p>5 or --</p> <p>6 A. It's not a division. It's not -- it's not a</p> <p>7 division. It's a -- it's a component. It's a sales</p> <p>8 function. Just like retail sales, there's food service</p> <p>9 sales. So there are food service sales as part of the</p> <p>10 sales component of the company.</p> <p>11 Q. And are all of the employees, to your</p> <p>12 knowledge, at Pepsi Food Service employees of PepsiCo?</p> <p>13 A. They would have the same reporting</p> <p>14 relationship that I would have. They report in to Kirk</p> <p>15 Tanner, Kirk Tanner reports into Al Carey, Al Carey</p> <p>16 reports into Indra Nooyi.</p> <p>17 THE COURT REPORTER: What was the name?</p> <p>18 THE WITNESS: Indra Nooyi.</p> <p>19 MR. QUINN: N-O-O-Y-I. And the first name is</p> <p>20 I-N-D-R-A.</p> <p>21 BY MR. RAGAIN:</p> <p>22 Q. So to your understanding, does PepsiCo control</p> <p>23 the employees of Pepsi Food Service?</p> <p>24 MR. QUINN: Object to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">Page 23</p> <p>1 Al Carey, who's the CEO of PepsiCo North America.</p> <p>2 Q. Is PBC a bottler and distributor of PepsiCo</p> <p>3 bottle and can CSD products?</p> <p>4 A. Yes.</p> <p>5 Q. Is PBC an independent bottler?</p> <p>6 A. No.</p> <p>7 Q. Using your terminology that you've used</p> <p>8 today --</p> <p>9 A. I would -- I would characterize us, we're a</p> <p>10 company-owned bottling operation.</p> <p>11 Q. Thank you.</p> <p>12 To your knowledge, is Northern Bottling a</p> <p>13 bottler and distributor of PepsiCo bottle and can CSD</p> <p>14 products?</p> <p>15 MR. QUINN: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Yeah, rephrase that. Or can you</p> <p>18 state it again, please?</p> <p>19 BY MR. RAGAIN:</p> <p>20 Q. To your knowledge, is Northern Bottling a</p> <p>21 bottler and distributor of PepsiCo bottle and can CSD</p> <p>22 products?</p> <p>23 A. Of PBC products, DSD products?</p> <p>24 Q. PepsiCo bottle and can CSD products.</p> <p>25 A. I'm not sure when you say "PepsiCo." What's</p>
<p style="text-align: right;">Page 22</p> <p>1 THE WITNESS: Again, "controlled" being? What</p> <p>2 does controlled mean in your -- what are you</p> <p>3 looking for in terms of control?</p> <p>4 BY MR. RAGAIN:</p> <p>5 Q. Hires and fires them.</p> <p>6 A. No, that would be -- that would be North</p> <p>7 America Beverage that hires and fires the food service</p> <p>8 salespeople.</p> <p>9 Q. And is North America Beverage a separate</p> <p>10 company from PepsiCo, sir?</p> <p>11 A. No, it's -- it's part of sector. But we</p> <p>12 have -- North America Beverage has its own management</p> <p>13 structure and operates the business independently, makes</p> <p>14 its own -- we make our own decisions on who to hire and</p> <p>15 fire in sales personnel and call on customers and</p> <p>16 everything else.</p> <p>17 Q. To your knowledge, though, do the employees of</p> <p>18 NAB work for PepsiCo?</p> <p>19 A. Yes.</p> <p>20 Q. Who's the head person at Pepsi Food Service?</p> <p>21 A. Anne Fink.</p> <p>22 Q. And does Anne Fink report to anyone at</p> <p>23 PepsiCo?</p> <p>24 A. She reports to Kirk Tanner who is the</p> <p>25 president of North America Beverages, who reports in to</p>	<p style="text-align: right;">Page 24</p> <p>1 your --</p> <p>2 Q. Pepsi, Mountain Dew, Diet Pepsi, Diet Mountain</p> <p>3 Dew --</p> <p>4 A. Are they the distributor of those brands?</p> <p>5 Q. Yes.</p> <p>6 A. My understanding is they are a distributor of</p> <p>7 those brands, yes.</p> <p>8 Q. Thanks.</p> <p>9 And that's a good point, you know, this is my</p> <p>10 first foray into the soft drink industry, so if I ask</p> <p>11 you a question that's just makes no sense whatsoever, be</p> <p>12 sure to tell me.</p> <p>13 A. Okay.</p> <p>14 Q. Don't fumble around trying to answer stuff</p> <p>15 that --</p> <p>16 A. Okay.</p> <p>17 Q. -- doesn't make sense.</p> <p>18 A. Thank you.</p> <p>19 Q. Thank you.</p> <p>20 Is PBC the largest bottler and distributor of</p> <p>21 PepsiCo bottle and can CSD products in the United</p> <p>22 States?</p> <p>23 A. PBC sells the majority of, yes, bottle and can</p> <p>24 products to customers in the -- in U.S., yes, represent</p> <p>25 the largest part of the business, the PBC organization</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
25-28

<p style="text-align: right;">Page 25</p> <p>1 does, yes.</p> <p>2 Q. And about what percentage of the -- of the 3 business is PBC?</p> <p>4 A. Approximately, you know, high 70s.</p> <p>5 Q. One witness, Mr. Trant, characterized it as 6 essentially 80/20. 80 PBC and 20 for the 85 independent 7 bottlers --</p> <p>8 A. High 70s. 80 is pretty close in my mind, 9 yeah.</p> <p>10 Q. Okay. So in terms of sales of PepsiCo bottle 11 and can CSD products, PBC, if I understand you 12 correctly, is larger than all of the independent 13 bottlers combined?</p> <p>14 A. PBC is the largest, yes, bottling organization 15 inside of North America, yes.</p> <p>16 Q. And would be larger than all of the 17 independent bottlers --</p> <p>18 A. Combined?</p> <p>19 Q. -- combined?</p> <p>20 A. Uh-huh, yes.</p> <p>21 Q. And do you know how many independent bottlers 22 there are in the system, sir?</p> <p>23 A. I mean, there are dozens and dozens, you know, 24 close to a hundred.</p> <p>25 Q. What is transshipping?</p>	<p style="text-align: right;">Page 27</p> <p>1 wouldn't have to take time away from their other jobs, 2 et cetera. So my question is: Do you know why Pepsi 3 has a policy against transshipping?</p> <p>4 MR. QUINN: Objection to the form of the 5 question. The first half is speculative, your 6 statement. And asked and answered.</p> <p>7 THE WITNESS: Sorry. Can you repeat that 8 again? I want to be clear on what you're asking.</p> <p>9 BY MR. RAGAIN:</p> <p>10 Q. Why does Pepsi have a policy against 11 transshipping?</p> <p>12 MR. QUINN: Objection. Asked and answered.</p> <p>13 THE WITNESS: It's a policy that's been in 14 place as long as I can remember. And it's, you 15 know, again, designed to make sure that product 16 does not leave an authorized territory into an 17 unauthorized territory.</p> <p>18 BY MR. RAGAIN:</p> <p>19 Q. While you've been an employee of PepsiCo, have 20 you ever been informed that PepsiCo had a contractual 21 obligation to attempt to prevent transshipping?</p> <p>22 A. I'm sorry, say that again.</p> <p>23 Q. While you've been an employee of PepsiCo, have 24 you ever been informed that PepsiCo had a contractual 25 obligation to attempt to prevent transshipping?</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Transshipment is -- my -- my understanding of 2 it is, it's when product leaves one boundary, one 3 geographical area and crosses over into another boundary 4 area that's not permissible [sic]. So product from an 5 authorized territory shipped to a product in a 6 nonauthorized territory.</p> <p>7 Q. Does PepsiCo attempt to prevent transshipping?</p> <p>8 A. Yes.</p> <p>9 Q. Why?</p> <p>10 A. Because it's disruptive to our business.</p> <p>11 It's -- it's against company policy and there's nothing 12 good about it.</p> <p>13 Q. How is it disruptive to -- to the business?</p> <p>14 A. It's disruptive in that it takes time, 15 investigations, the complexities of all the 16 investigations. There are fines. People are pulled off 17 of their day job to have to go deal with the matters at 18 hand and it takes time away from really taking care of 19 customers and taking care of the front line, those type 20 of things. So it's -- it's disruptive, yeah, it is.</p> <p>21 But it's a part of the -- it's -- it's part of the 22 business. It happens and we have to react -- when it 23 happens, we have to react responsibly and swiftly.</p> <p>24 Q. But if Pepsi didn't have a policy against 25 transshipping, none of those things would occur. People</p>	<p style="text-align: right;">Page 28</p> <p>1 A. A contract- -- have I ever been informed?</p> <p>2 It's always been a policy that I've operated under as -- 3 so all the time I've been operating the business, it's 4 always been a policy for us to enforce that so we 5 prevent it where we can prevent it and then react 6 swiftly and accordingly when issues are brought to our 7 attention, and that's always been an ongoing practice 8 that I've been affiliated with the time I've been in, 9 you know, the management roles I've been in.</p> <p>10 Q. While you've been an employee of PepsiCo, sir, 11 were you -- have you ever been informed that PepsiCo had 12 a legal obligation or duty of any kind to attempt to 13 prevent transshipping?</p> <p>14 A. Again, the way I would answer this is, it's 15 always been the practice for us to sign off on 16 transshipment policies, react swiftly and responsibly to 17 cases that are brought up. And, you know, it's -- 18 it's -- we've operated with a very consistent mindset on 19 this topic for a number, number of years. And this -- 20 had somebody informed me or not informed me, all I know 21 is every year we want to make sure that all employees 22 are aware so that new employees join the organization, 23 they're brought up to speed and aware of our policy on 24 transshipment and that we have strict adherence to it, 25 and again, that we act swiftly and responsibly when</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICOJune 19, 2017  
29-32

<p style="text-align: right;">Page 29</p> <p>1 matters are brought to our attention.</p> <p>2 Q. Well, while you've been an employee of</p> <p>3 PepsiCo, Mr. Lewis, what, if anything, have you been</p> <p>4 told about whether PepsiCo had any type of obligation to</p> <p>5 prevent transshipping?</p> <p>6 A. The obligation that I operate under is that</p> <p>7 it's our jobs, the responsibility of any employee of the</p> <p>8 organization to honor the policy that was developed</p> <p>9 many, many years ago and obviously continues to be</p> <p>10 updated. But that all employees adhere, strict</p> <p>11 adherence to the policy, reinforcement of that policy to</p> <p>12 customers and acting responsibly and swiftly to matters</p> <p>13 when they're brought to our attention and that's how</p> <p>14 I've always operated from day one. So I want to -- I</p> <p>15 want to tell you, once you get into roles, this is part</p> <p>16 of your job and it's always part of your job, so there's</p> <p>17 no -- I didn't sit in some meeting halfway through my</p> <p>18 career and they said, hey, we're going to have a meeting</p> <p>19 on transshipment from the company. Like, this has,</p> <p>20 again, always been part of our responsibility in the</p> <p>21 field. So I'm not aware of some enlightening moment</p> <p>22 where it was a -- some, you know, theater around</p> <p>23 creating this. This is something we do day in and day</p> <p>24 out. This is something we do year in and year out.</p> <p>25 Q. I guess, what I'm asking is: Do you know why</p>	<p style="text-align: right;">Page 31</p> <p>1 purchasers of bottle and can CSD products from reselling</p> <p>2 those products where they're not supposed to be sold?</p> <p>3 A. Yes.</p> <p>4 MR. QUINN: Did you say PepsiCo or PBC, Jim?</p> <p>5 MR. RAGAIN: Both.</p> <p>6 MR. QUINN: Sorry.</p> <p>7 BY MR. RAGAIN:</p> <p>8 Q. My question -- in my view, PBC is PepsiCo. Is</p> <p>9 that -- is that different than what your understanding</p> <p>10 is, sir?</p> <p>11 A. PepsiCo does not operate our business day to</p> <p>12 day. PBC operates the business day in and day out. So</p> <p>13 I think a lot of times when you're saying "PepsiCo," you</p> <p>14 assume that somebody inside of PepsiCo is making</p> <p>15 decisions on our business. They are in some areas</p> <p>16 probably strategically, but the day-to-day operations of</p> <p>17 selling product in the authorized trade area,</p> <p>18 maintaining good customer relationships, doing the</p> <p>19 things that we do as bottlers every day, that is a</p> <p>20 PBC-controlled activity. So any time you say "PepsiCo,"</p> <p>21 I'm not sure of your intent of, are you asking about</p> <p>22 somebody inside of purchase or are you asking about</p> <p>23 somebody inside the PBC organization or the NAB</p> <p>24 organization for that matter, considering Anne Fink and</p> <p>25 various people do sit -- they don't necessarily sit on</p>
<p style="text-align: right;">Page 30</p> <p>1 PepsiCo has a policy against transshipping?</p> <p>2 MR. QUINN: Objection --</p> <p>3 BY MR. RAGAIN:</p> <p>4 Q. Do you know what -- do you know what the</p> <p>5 policy is based upon?</p> <p>6 MR. QUINN: Objection. Asked and answered.</p> <p>7 THE WITNESS: Well, again, I'm going to go</p> <p>8 back to policy put in place to prevent -- prevent</p> <p>9 product from an authorized -- authorized territory</p> <p>10 to go into an unauthorized territory. So I would</p> <p>11 imagine the policy is in place to prevent that from</p> <p>12 happening. And if that happens, again, it creates</p> <p>13 disruption within the entire family that would be</p> <p>14 in the authorized territory and the unauthorized</p> <p>15 territory. So it's our job to prevent that from</p> <p>16 occurring whatsoever so that business operations</p> <p>17 can be maintained smoothly in an authorized selling</p> <p>18 area or nonauthorized selling area. That's why we,</p> <p>19 you know, focus on the policy as it is today to --</p> <p>20 to keep smooth business operations going so we can</p> <p>21 sell to customers, take care of our front line</p> <p>22 every day and do the things we have to do to grow</p> <p>23 our businesses respectively.</p> <p>24 BY MR. RAGAIN:</p> <p>25 Q. Does PepsiCo have any rules designed to keep</p>	<p style="text-align: right;">Page 32</p> <p>1 PBC -- they don't sit on top of PBC, but they do sit</p> <p>2 inside NAB.</p> <p>3 So to me, this is a North America Beverage or</p> <p>4 PBC type of question, not a PepsiCo question, in my</p> <p>5 opinion. So when you say "PepsiCo," I think it does</p> <p>6 draw concern of what your -- so I don't know why we just</p> <p>7 can't operate with PBC or NAB because that's who I work</p> <p>8 for. That's who I -- that's my responsibility day in</p> <p>9 and day out is PBC. It's not PepsiCo.</p> <p>10 Q. Well, the reason why I ask the questions this</p> <p>11 way, it's my understanding, based on all of the</p> <p>12 testimony in this case and your testimony, that PBC is</p> <p>13 controlled by PepsiCo.</p> <p>14 MR. QUINN: Object to the form of the</p> <p>15 question.</p> <p>16 BY MR. RAGAIN:</p> <p>17 Q. Is that not true, sir?</p> <p>18 A. PBC falls under NAB, which falls under</p> <p>19 PepsiCo, yes.</p> <p>20 Q. And I can word the questions, if you would</p> <p>21 prefer me to, by using all the different labels. I use</p> <p>22 PepsiCo because if everybody is a part of PepsiCo, it's</p> <p>23 easier to say "PepsiCo" than it is PepsiCo, NAB, PBC,</p> <p>24 PFS; do you see what I'm saying?</p> <p>25 MR. QUINN: Object to the form of the question</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
33-36

<p style="text-align: right;">Page 33</p> <p>1 in light of the witness's answers.</p> <p>2 BY MR. RAGAIN:</p> <p>3 Q. Do you understand what I'm saying, sir?</p> <p>4 A. It's easier if I can relate to what I'm</p> <p>5 responsible for.</p> <p>6 Q. And -- and any time if I ask a question that</p> <p>7 creates that, for lack of a better word, confusion or</p> <p>8 concern on your part, will you try and bring it to my</p> <p>9 attention?</p> <p>10 A. You got it.</p> <p>11 Q. Thank you.</p> <p>12 Does PepsiCo and/or PBC have any rules</p> <p>13 designed to keep purchasers of PepsiCo bottle and can</p> <p>14 CSD products from reselling those products in</p> <p>15 territories where they are not supposed to be sold?</p> <p>16 MR. QUINN: Object to the form of the</p> <p>17 question.</p> <p>18 You may answer. It's compound.</p> <p>19 THE WITNESS: One more time.</p> <p>20 BY MR. RAGAIN:</p> <p>21 Q. He's the rule ninja.</p> <p>22 MR. QUINN: Well --</p> <p>23 BY MR. RAGAIN:</p> <p>24 Q. Go ahead, Mr. Lewis.</p> <p>25 MR. QUINN: -- when you say and/or, Jim,</p>	<p style="text-align: right;">Page 35</p> <p>1 A. I'm aware of the customer policies that get</p> <p>2 presented to customers. I'm aware of the front line or</p> <p>3 the sales organization policy. So there's an internal</p> <p>4 component and an external component I'm very familiar</p> <p>5 with in -- in executing against. If there are other</p> <p>6 communications out there, I'm not fully aware of them or</p> <p>7 use them in my day-to-day operating agenda.</p> <p>8 Q. Is there a name for the contracts that you</p> <p>9 refer to?</p> <p>10 MR. QUINN: You mean the customer contracts?</p> <p>11 MR. RAGAIN: Yes.</p> <p>12 THE WITNESS: Traditionally, they've been</p> <p>13 called customer development agreements, but that's</p> <p>14 evolved over the years. So CDA, a very common term</p> <p>15 that the industry probably would use, but again,</p> <p>16 those have evolved over a number of years. Some</p> <p>17 stay that way, some not. It's really an informal</p> <p>18 term used, but it's the nature of a customer</p> <p>19 development agreement or customer partnership.</p> <p>20 Yes, those are synonymous on how we set up</p> <p>21 agreements with customers to help drive the</p> <p>22 business.</p> <p>23 Bless you.</p> <p>24 BY MR. RAGAIN:</p> <p>25 Q. And to your knowledge, sir, who are the</p>
<p style="text-align: right;">Page 34</p> <p>1 that's a compound question.</p> <p>2 MR. RAGAIN: Thank you, Tom. And -- and if</p> <p>3 I -- if I need any more grammar advice, I'll call</p> <p>4 you.</p> <p>5 BY MR. RAGAIN:</p> <p>6 Q. Go ahead and answer the question, Mr. Lewis.</p> <p>7 MR. QUINN: And I'll object when it's</p> <p>8 appropriate to object and this will go smoothly.</p> <p>9 THE WITNESS: Okay. So now, I've lost --</p> <p>10 like, I've lost the question again. Can you hit me</p> <p>11 one more time?</p> <p>12 BY MR. RAGAIN:</p> <p>13 Q. Does PepsiCo and/or PBC have any rules</p> <p>14 designed to keep purchasers of PepsiCo bottle and can</p> <p>15 CSD products from reselling those products in</p> <p>16 territories where they are not supposed to be sold?</p> <p>17 MR. QUINN: Same objection.</p> <p>18 THE WITNESS: PBC does have stipulation in its</p> <p>19 customer agreements to prevent product from leaving</p> <p>20 an authorized area to a nonauthorized area.</p> <p>21 BY MR. RAGAIN:</p> <p>22 Q. Do those rules appear in writing anywhere,</p> <p>23 other than in the customer agreements?</p> <p>24 A. In the transhipping policy for employees.</p> <p>25 Q. Anywhere else?</p>	<p style="text-align: right;">Page 36</p> <p>1 parties to these customer agreements? Obviously, the</p> <p>2 customer would be one party.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Is PBC or PepsiCo the other party?</p> <p>5 A. PBC. The selling -- the selling entity, so</p> <p>6 PBC in this case, yes.</p> <p>7 Q. And -- and what do those contracts say as far</p> <p>8 as the rules about where you can resell the products?</p> <p>9 A. You know, product is restricted to our trading</p> <p>10 area through our boundary area, which is, you know,</p> <p>11 defined and it stipulates, you know, if for somehow,</p> <p>12 some way that rule was broken, there are -- you know,</p> <p>13 there are consequences for shipping product from an</p> <p>14 authorized territory to a nonauthorized territory.</p> <p>15 Q. When you say "your boundary," it's my</p> <p>16 understanding, correct me if I'm wrong, that PBC has</p> <p>17 many territories.</p> <p>18 A. We have -- when you say "many terr--" -- we</p> <p>19 have a lot of -- yeah, we cover -- since we cover almost</p> <p>20 80 percent of the country, we would have a lot of</p> <p>21 geography out there, yes.</p> <p>22 Q. Okay. So does -- does the CDA restriction</p> <p>23 you're talking about restrict the resale of the product</p> <p>24 to anywhere within PBC's territories?</p> <p>25 A. No, just within -- within that -- within that</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
37-40

Page 37 1 current specific geography, so within a trading area 2 of -- if, like, say for example, let's say Florida, 3 Florida is all -- most of the Florida operation is PBC. 4 There is a part of Florida that's nonPBC, but let's 5 stick with the PBC area. Florida, if an agreement was 6 done for a bottler or the outfit that distributes in 7 Central Florida, that outfit would be limited to trading 8 or selling only within the Central Florida limits. And 9 a South Florida distributor would, therefore, only be 10 available -- eligible to distribute products in the 11 South Florida boundary area that we set up. And north 12 Florida, et cetera, et cetera.  13 Q. Who enforces these rules or these contracts? 14 A. There are a number of people, but primarily 15 the selling agent for the customer. So, you know, 16 there's a selling -- the selling arm and obviously, 17 there's a management arm. So the people who directly 18 call on the customers and then the people that they 19 report in to would be, you know, essentially the second 20 arm of that. And then, subsequently everybody -- all -- 21 everybody is accountable, but the people that are 22 closest to the customer, obviously, have greater 23 accountability.  24 Q. What's that accountability consist of for 25 those people closest to the customer?	Page 39 1 A. There's a contract in place, I would imagine, 2 for all customers. When you refer to a contract being 3 signed, I don't have visibility to every contract, so I 4 can't sit here and say, yes, I've seen every contract 5 and every contract is signed. What I can say is that 6 every customer that we do business with is presented our 7 policy as it relates to transshipment and they 8 understand that there are consequences for violation of 9 that agreement.  10 Q. My question is: Do all of these customers 11 sign a written contract that contains those terms or are 12 some of them simply informed of what your policy is?  13 MR. QUINN: Object to the form of the 14 question.  15 You may answer.  16 THE WITNESS: The customers are all presented, 17 with a high degree of consistency, our stance on 18 that -- on our policies as relates to transshipment 19 or authorized going into unauthorized. I do not -- 20 have not seen every contract. I don't have -- I 21 don't look at every single contract. The natural 22 course of business is to, yes, try to obtain a 23 signed contract. In the cases where somebody 24 doesn't actually sign a contract, we want to a 25 hundred percent know that we've -- for them to
Page 38 1 A. Well, maintaining that -- are you talking in 2 general? General elements of the contract? Or are you 3 talking about -- give me -- give me a feel of what 4 you're looking for.  5 Q. I'm sorry, I was talking about the rules 6 restricting where the products can be refilled.  7 A. Okay. So this is the authorized and 8 nonauthorized. So in that case, they're responsible for 9 ensuring that that does not happen and, you know, there 10 are a number of ways to monitor that throughout the 11 course of the year. And it's their responsibility if, 12 obviously, they were to flag any activity that would 13 lead to that authorized into a nonauthorized, then the 14 consequences of our policy would begin to be 15 implemented.  16 Q. Do you have contracts that contain these rules 17 that you've been discussing with all customers?  18 A. All customers are absolutely presented our 19 full language and extent on this policy, yes. So all 20 customers would -- all customers that we sell to 21 understand our position on authorized area versus 22 nonauthorized area, yes.  23 Q. So are you saying, though, that some have 24 actual written contracts that they sign that contain 25 those rules and others do not?	Page 40 1 agree to get product, they have to acknowledge and 2 understand the nature of our arrangement and, 3 again, our policy on moving from authorized to 4 unauthorized.  5 So yes, all customers, as we sell them 6 product, understand our position on transshipment 7 is a violation and there are consequences for it.  8 BY MR. RAGAIN:  9 Q. But not all of them actually sign a contract 10 containing those restrictions -- 11 A. I have not seen -- 12 Q. -- is that true, sir? 13 A. -- every contract, so I can't tell you, yes, 14 100 percent of our contracts are signed. I can't tell 15 you that 100 percent of our contracts aren't signed. I 16 haven't seen all the contracts. What I can tell you is 17 that the customers all -- there's consistency in 18 articulating our position on transshipment, as there are 19 compliance on certain products, certain SKUs they have 20 to carry, certain promotional allowances they have to -- 21 that they'll get if they meet compliance. So there's an 22 agreement for us to do business with you. We have 23 certain elements.  24 Transshipment is one element of the agreement. 25 It's not the only thing we talk to them about. We talk

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
41-44

<p>Page 41</p> <p>1 to them about a number of things that help drive the 2 business and do it responsibly. And transshipment is -- 3 is absolutely one of those items that is on that list 4 with SKUs, service, you know, product quality, all the 5 things that are associated with driving a solid customer 6 agreement.</p> <p>7 Q. And who is responsible for informing customers 8 about those transshipment rules?</p> <p>9 A. The selling agent. Likely, the first line is 10 the key account manager, the person he or she is 11 responsible for the individual ownership of that account 12 and sell that account. And then subsequently, the 13 management of the selling people that go in there would 14 be the -- the next line of enforcement.</p> <p>15 Q. And are these customers -- to your knowledge, 16 sir, are they -- are they told where the actual 17 boundaries are in a geographic sense?</p> <p>18 A. They would know that, yes. That's -- there's 19 no way for you -- you can't tell them 20 authorized/nonauthorized unless they have a sense of 21 what nonauthorized is. So they have to know what 22 authorized is and they would have to know an example of 23 nonauthorized. So you're stepping from one boundary to 24 another, that's not a -- our people, by the way, would 25 know or have a sense if they were -- even had direct</p>	<p>Page 43</p> <p>1 channel in addition to geographic-type restrictions?</p> <p>2 A. The nature of our relationship would be our 3 product sales to that outfit would then lead directly to 4 a consumer purchase intent, not to another customer. So 5 if I sell to a vending operator, I would expect that the 6 vending machine I have here, you know, or in the break 7 room, that the product I sell to that third-party 8 operator is going to be used directly for the vending 9 asset that I have in this office building. Not the 10 intent for them to go sell it to another customer. That 11 would -- that would not make any sense to us to do that.</p> <p>12 Our intent is, I want to capture sales in those assets 13 and those places of business that you have that I cannot 14 directly get to that you're selling directly to the 15 consumer. That's our intent. That's our focus.</p> <p>16 Q. Are you saying that PBC does not use 17 third-party distributors to resell bottle and can 18 products?</p> <p>19 A. I'm not going to say it doesn't happen. Some 20 cases, yes, that -- that were to happen if the nature of 21 that business is -- is a wholesaler and customers either 22 come up directly and -- and buy from that customer or 23 there's cases where, I guess, they could sell and 24 distribute. But mainly, our intent is for that business 25 to reach the consumer. But yeah, there are cases where</p>
<p>Page 42</p> <p>1 business relationships in a nonauthorized area. We 2 would -- we would likely know that in advance and can 3 properly do due diligence on both sides to ensure that 4 that policy is maintained in a very restrict manner.</p> <p>5 Q. Are there restrictions on reselling product by 6 channel as opposed to by geographic territory?</p> <p>7 A. Can you say that one more time, so I can -- 8 please.</p> <p>9 Q. Do you have any restrictions on where product 10 can be resold that are based on sales channel as opposed 11 to geographic territory?</p> <p>12 A. I'm not sure when you say -- what you mean 13 when you say "resold." We don't -- I'm not sure when 14 you say "resold." What does that mean? Does that mean 15 me selling to a channel or does that mean a channel is 16 selling to somebody else? What does that -- what are 17 you trying to get at?</p> <p>18 Q. I -- my question assumes -- or my question is: 19 Re- -- reselling means by the purchaser from PBC. So if 20 ABC Distributing purchases --</p> <p>21 A. Directly from me.</p> <p>22 Q. -- bottle and can products directly from 23 you --</p> <p>24 A. Okay.</p> <p>25 Q. -- then are there restrictions based on sales</p>	<p>Page 44</p> <p>1 it -- it could be a resale factor.</p> <p>2 So a Jetro is a -- is a wholesaler. So 3 they're wholesalers, so they do sell to people coming 4 in, business people. They operate like a club store, so 5 club stores sell to business owners. So yeah, I guess, 6 you know, in this case, yeah, and in that case, that 7 would be correct. In the case of a company that 8 operated vending machines, and I knew the nature of the 9 business was vending machines, when I sell to them, I 10 would expect most, if not all of my transactions -- 11 really all of my transactions to go to the vending 12 machines that they own and operate. So it depends 13 really on that customer and what assets they own and 14 what their -- their operation is set up to be.</p> <p>15 So does that clarify?</p> <p>16 Q. I think so.</p> <p>17 A. Okay.</p> <p>18 Q. How does PBC -- in cases where there are not 19 written contracts, how does PBC inform those customers 20 about the restrictions, the geographical restrictions on 21 a resale of the product?</p> <p>22 A. I don't know of any specific nonsigned -- 23 again, I haven't seen the landscape of what was signed 24 and what was not signed. Again, what I will say is, 25 everybody is informed, when we -- when we set up the</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
45-48

<p>Page 45</p> <p>1 nature of the selling arrangement with the customer, 2 that is all outlined and presented to the customer. And 3 if the customer, obviously, agrees to all of the 4 elements -- by the way, if they didn't agree to all of 5 the elements, then we don't have a contract, we don't 6 have an agreement, we don't -- we won't sell them 7 product. They -- if they were to say, I'm not going to 8 carry these SKUs, I'm not going to be told where I can 9 sell to, not can sell to and, you know, I want you to 10 deliver on Sundays or anything else, then thank you 11 Mr. and Mrs. Customer, we, unfortunately, at this time 12 would not be able to have an agreement with you and 13 we'll move on.</p> <p>14 So they have to -- if they -- if we ship them 15 product, then it's my understanding and I'm confident 16 that our team has presented all the elements of that 17 agreement, which include moving product from an 18 authorized area to a nonauthorized area.</p> <p>19 Q. And what I'm asking, sir, is -- is: How your 20 team presents those in cases where you would not have a 21 written signed contract with that customer?</p> <p>22 A. There is -- there is -- there's going to be a 23 written contract. We don't sit across the table and 24 just talk. There is going to be a document with all of 25 our elements outlined, including the transshipment</p>	<p>Page 47</p> <p>1 region would be responsible for that, yes. So they 2 would -- they would know who has or who hasn't, yes.</p> <p>3 Q. And how many people are we talking about that 4 have that responsibility to make sure each customer has 5 a written contract and that it's signed?</p> <p>6 A. There are --</p> <p>7 MR. QUINN: Objection to the form of the 8 question. That misstates his earlier testimony.</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MR. RAGAIN:</p> <p>11 Q. Let's make sure it's clear.</p> <p>12 A. Go ahead. Say it -- say it again.</p> <p>13 Q. Let's make sure it's clear.</p> <p>14 A. Yeah.</p> <p>15 Q. Would it be the key account managers' and the 16 region, as you call it, responsibility to see that each 17 customer of PBC has a written contract?</p> <p>18 MR. QUINN: Objection. Misstates his 19 testimony.</p> <p>20 THE WITNESS: They would be responsible to 21 present fully if all the correct elements of the -- 22 the outlined customer development agreements that 23 we develop and we -- we agree to and align to. So 24 it's your job to present those elements and assure 25 they're holding the customer responsible for those</p>
<p>Page 46</p> <p>1 portion of that document that will be presented to the 2 customer. Again, which ones sign, which ones don't 3 sign? I assume all of them sign because, again, we sell 4 them product, I assume. But I can't guarantee and 5 verify that I've seen all the contracts.</p> <p>6 Q. Who would I ask that at PBC, if I wanted to 7 know?</p> <p>8 A. I don't know who has looked at every single 9 contract. The contracts are on file. And I'm sure, if 10 somebody wanted to get all the contracts together, they 11 probably could get all the contracts together, but 12 that's not what I -- that's not what I do.</p> <p>13 Q. I understand you are the head person with 14 respect to sales of bottle and can products at PBC; is 15 that true?</p> <p>16 A. The DSD element and the retail component -- 17 DSD retail, yes; and do I oversee the delivery of food 18 service sales volume? Yes. Do I oversee the selling of 19 food service? No.</p> <p>20 Q. Do you know, sir, does PBC have a person who 21 is responsible for looking at all of those contracts --</p> <p>22 A. The key account managers would, yes.</p> <p>23 Q. Let me finish my question -- to see that they 24 are signed?</p> <p>25 A. The key account managers and the region -- the</p>	<p>Page 48</p> <p>1 elements.</p> <p>2 BY MR. RAGAIN:</p> <p>3 Q. And is that in the form of a signed contract 4 from the customer?</p> <p>5 MR. QUINN: Objection. Asked and answered 6 multiple times.</p> <p>7 THE WITNESS: At least a dozen.</p> <p>8 BY MR. RAGAIN:</p> <p>9 Q. Please answer it again.</p> <p>10 A. Our teams are responsible for presenting a 11 fully executed CDA agreement with the customer that has 12 various elements of compliance for us to be able to sell 13 them product on a consistent basis or any basis. If 14 they don't agree to the elements, we don't sell them 15 product. So if we sell them product, it's my 16 understanding that they've agreed to comply with all the 17 elements. At any point in time if they don't complete 18 or comply with any of the elements, we now have a right 19 to go in and restrict, rescind, act on consequences, 20 based on whatever noncompliance has been surfaced.</p> <p>21 Q. What do you mean when you say a fully executed 22 CDA?</p> <p>23 A. Executing against all the elements, A, B, C, 24 D. I have sku. I have product sku requirements, 25 meaning you have to carry a certain type of products. I</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
49-52

<p style="text-align: right;">Page 49</p> <p>1 have pricing elements. I have service elements. I have 2 transhipping -- or diversion -- transhipping elements. 3 There are various elements of a contract that we want to 4 be adhered to for us to have a good business proposition 5 that work for both us and work for the customer, so that 6 we can both grow the business and profit responsibly.</p> <p>7 Q. If there is a customer that agreed to all of 8 the requirements, as you listed them out to be a 9 customer of PBC, but refused to sign a written document 10 to that effect, would you still -- would PBC still sell 11 to them?</p> <p>12 MR. QUINN: Object to the form of the 13 question.</p> <p>14 THE WITNESS: Say -- say that again.</p> <p>15 BY MR. RAGAIN:</p> <p>16 Q. If they -- if -- if a customer says, I will 17 agree to do all of these things as you've outlined, 18 Mr. Sales Manager or whatever the person is, but I'm not 19 going to sign anything to that effect, would PBC still 20 sell the bottle and can products to them?</p> <p>21 MR. QUINN: Same objection.</p> <p>22 You may answer.</p> <p>23 THE WITNESS: If we've presented a fully 24 executed document and the decision maker has agreed 25 to execute, understands all the elements of the</p>	<p style="text-align: right;">Page 51</p> <p>1 both? It doesn't matter?</p> <p>2 Q. PBC.</p> <p>3 A. PBC? Regions, regions would have a -- the 4 regions would know what contracts have been -- and you 5 mean signed being not agreed to -- you mean agreed to -- 6 let me ask you a question. Because I take -- decision 7 maker agrees to comply with all the elements, you're 8 talking about just what I -- you're just talking about 9 somebody signing, something versus somebody agreeing to 10 something and are those mutually exclusive in your mind?</p> <p>11 Q. Perhaps. My question is signed versus 12 unsigned agreement with the customer.</p> <p>13 A. And I -- I don't -- I don't have -- I 14 personally don't have an understanding of however many 15 contracts we have, how many deals have been signed. I 16 know when we sell product to any customer that we have 17 an agreement on how we're going to go to market 18 together. The products you're going to carry, the 19 pricing, the transshipment, all those things that we 20 just talked about, I know the customers agreed. So I 21 know that all the customers that we sell to have agreed 22 to execute our contract, execute our agreement.</p> <p>23 Q. And my question is: Is that agreement signed 24 and in writing in all cases?</p> <p>25 MR. QUINN: Objection. Asked and answered</p>
<p style="text-align: right;">Page 50</p> <p>1 contract and agreed to executing all the elements 2 of the contract, the decision maker, we would note 3 that as, customer has agreed, understands and 4 agrees to the agreement that has been outlined. 5 They have a copy. And in that case, they likely 6 would -- we would likely sell to them because of 7 that acknowledgment and the decision maker agreeing 8 and signing and telling us they understand, they 9 agree without signing, but they have a copy and 10 have acknowledged that they're going to execute all 11 the elements of the contract, yes.</p> <p>12 BY MR. RAGAIN:</p> <p>13 Q. And do you know, as we sit here today, how 14 many customers of PBC, for PepsiCo bottle and can CSD 15 products, are operating with a signed contract versus a 16 nonsigned contract?</p> <p>17 A. I don't -- I don't have the answer to that.</p> <p>18 Q. And who at PepsiCo or PBC would have the 19 answer to that that I can talk to?</p> <p>20 A. The food service sales group.</p> <p>21 Q. Just the food service sales group?</p> <p>22 A. That would be -- well, that would be the most 23 direct line, that's the food service -- they're signing 24 the contracts, yeah, or the -- or the regions.</p> <p>25 Are you asking for food service or retail or</p>	<p style="text-align: right;">Page 52</p> <p>1 repeatedly.</p> <p>2 MR. RAGAIN: No.</p> <p>3 MR. QUINN: You have, Jim. You've asked the 4 very same question.</p> <p>5 MR. RAGAIN: Thank you.</p> <p>6 BY MR. RAGAIN:</p> <p>7 Q. Go ahead and answer it one more time.</p> <p>8 A. I'm forgetting what I'm answering now. I 9 mean, this is...</p> <p>10 Q. I don't see how you can forget when I've asked 11 it so many times.</p> <p>12 MR. QUINN: Well, maybe it's because --</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. Do you --</p> <p>15 MR. QUINN: This has been hammered over and 16 over.</p> <p>17 Go ahead.</p> <p>18 BY MR. RAGAIN:</p> <p>19 Q. Do you know how many of these contracts that 20 PBC has with customers are signed --</p> <p>21 A. And I said --</p> <p>22 Q. -- versus not signed?</p> <p>23 A. I said I don't have a -- I don't have the 24 information with me right now. No, I don't.</p> <p>25 Q. All right. Any time you need to take a break,</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
53-56

Page 53	Page 55
<p>1 Mr. Lewis, just let us know. 2 A. Okay. Thanks. 3 MR. QUINN: We've been going about an hour, 4 so -- 5 THE WITNESS: Okay. 6 MR. QUINN: -- would you like to take a 7 five-minute break or keep going? 8 THE WITNESS: No, I'm good. 9 MR. QUINN: Okay. Let's keep going. 10 THE WITNESS: I'll let you know. 11 BY MR. RAGAIN: 12 Q. What's the transshipment enforcement program? 13 A. For customers? 14 Q. Well, it's my -- 15 A. That's a -- that's a broad statement. What -- 16 what specifically -- to who, to whom, I guess is what 17 I'm trying to understand. 18 Q. It's my understanding that PepsiCo has a 19 program called the PepsiCo transshipment enforcement 20 program. Can you tell me what that is? 21 A. The transshipment program is designed to, 22 again, maintain control over authorized product in an 23 authorized area versus authorized product in a 24 nonauthorized area. And there's a multistep process 25 where -- if that arrangement is violated, there's a</p>	<p>1 THE WITNESS: And I -- I specifically asked 2 about -- I asked that upfront, what were you 3 asking. It's a broad statement, so I'm talking to 4 you about what we talked to our customers about and 5 our employees about. 6 BY MR. RAGAIN: 7 Q. Do you know, sir, what the PepsiCo 8 transshipment enforcement program or PTEP is? 9 A. I don't know of what you refer to as a PepsiCo 10 enfor- -- PTEP, I don't -- I don't know of that specific 11 legality of what that is. I know we have a PBC 12 transshipment program in a document in a multistep 13 process that we deal with customers on and we manage our 14 employees in a very, very similar manner. Anything 15 beyond that, relative to outside of the entity of a 16 customer or one of my employees, I am not aware of what 17 the specifics are of that program. 18 Q. And when you say one of your employees, 19 what -- is there a policy or a written set of rules that 20 apply to the employees -- 21 A. Yes. 22 Q. -- with respect to transshipment? 23 A. Yes. 24 Q. Okay. And -- and what is that called? 25 A. It's -- it's all part of the transshipment</p>
<p>1 multistep process where we engage with the customer and 2 take action accordingly throughout the multistep 3 process. 4 Q. And who handles those multisteps? 5 A. It would start with the key account manager 6 and if needed to be, management would be brought in to 7 assist in cases where it had to be dealt with the higher 8 levels within that customer's organization. 9 Q. Who's in charge -- is there -- is there a 10 person at PepsiCo that's in charge of the PepsiCo 11 transshipment enforcement program? 12 MR. QUINN: Jim, can I just ask for a 13 clarification? And I -- I think we don't want to 14 get confused between the PBC policy for its 15 employees and the transshipment enforcement program 16 that applies to all bottlers. 17 MR. RAGAIN: Don't you be telling him answers 18 in this discussion. 19 MR. QUINN: I'm not going to tell him answers, 20 but we're going to have a messy record if the -- if 21 it isn't -- 22 MR. RAGAIN: My record will be just fine for 23 my purposes. 24 MR. QUINN: Well, I can tell because it is 25 ambiguous.</p>	<p>1 policy, PBC transshipment policy. 2 Q. Have you ever seen a copy of it? 3 A. Yeah, we have -- I have to sign it. Everybody 4 has to sign it. 5 Q. How often do you sign it? 6 A. Annually. 7 Q. Is it what's also referred to as the code of 8 conduct? 9 A. We have the -- the transshipment policy is a 10 separate distinct, but it would -- it would certainly 11 apply to, in my opinion, the code of conduct. But it's 12 its own standalone policy that is administered in a 13 standalone way. The code of conduct training is 14 separate and apart as well, that we go through annually. 15 So they're -- they're complementary. They're certainly 16 related, but the transshipment one is a -- one that we 17 go outside of the code of conduct training window to 18 administer. 19 Q. And is it a -- is it a physical document 20 that's signed or is it something that is signed online 21 or via a computer? 22 A. Both. But it's signed -- it's something that 23 has to be signed by all employees. 24 MR. RAGAIN: Has that been produced? 25 MR. QUINN: Yeah.</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
57-60

Page 57	Page 59
<p>1 BY MR. RAGAIN:</p> <p>2 Q. Does PepsiCo have a policy whereby bottlers 3 are -- if a -- if a bottler's product is found in 4 another bottler's territory, that the offending bottler 5 pays a fine?</p> <p>6 A. Are you talking about bottler, independent 7 bottler to independent bottler?</p> <p>8 Q. I'm talking about bottler to bottler.</p> <p>9 A. Bottler to bottler? I would assume that the 10 policy -- authorized and unauthorized is a consistent 11 application, I would imagine, around the system.</p> <p>12 Q. What I'm asking, sir, is: Does PepsiCo have 13 such a policy where a -- a bottler is fined if its 14 product is found in the territory of another bottler?</p> <p>15 A. I don't know if PepsiCo -- I don't know when 16 you say, does PepsiCo have a policy. If a bottler ships 17 unauthorized product -- ships authorized into a 18 nonauthorized bottler area, I'm assuming the bottler 19 would deal with that the way they would deal with it if 20 it occurred if it happened with PBC.</p> <p>21 Q. And how would that be?</p> <p>22 A. They would have to have an investigative unit 23 come in, trace back where the -- the codes and find the 24 source and then from there, report it and process will 25 be administered for there.</p>	<p>1 A. I don't know.</p> <p>2 Q. Do you -- do you receive that information from 3 anyone?</p> <p>4 A. Not that I -- not that I recall. Uh-uh.</p> <p>5 Q. Have you ever asked for it?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Does it not concern you how much the 8 transshipment --</p> <p>9 A. I'm concerned -- I'm concerned about --</p> <p>10 Q. Sir, let me finish my question.</p> <p>11 MR. QUINN: Well, hold on. Jim, you dropped 12 your voice and the witness thought you were done, 13 so there's a misunderstanding. Don't get angry 14 with him. Just ask the question.</p> <p>15 MR. RAGAIN: It's the tenth misunderstanding 16 so far and I did not drop my voice.</p> <p>17 MR. QUINN: Well, the record will --</p> <p>18 BY MR. RAGAIN:</p> <p>19 Q. Mr. Lewis --</p> <p>20 MR. QUINN: -- reflect it.</p> <p>21 BY MR. RAGAIN:</p> <p>22 Q. Mr. Lewis, would you -- would you read back 23 what I started to say, please.</p> <p>24 (The reporter read back the requested portion 25 of testimony.)</p>
<p>1 Q. And what is that process?</p> <p>2 A. The process of what? The transshipment 3 process?</p> <p>4 Q. The process that you just --</p> <p>5 A. The investigators go --</p> <p>6 Q. -- referred to, sir?</p> <p>7 A. The investigators go out, they find codes and 8 if the codes are deemed to be traced back to a sourced 9 area, those -- those products are, you know, now 10 potentially linked to fines that -- you know, you have 11 to pay transshipment fines on.</p> <p>12 Q. Does PBC pay transshipment fines?</p> <p>13 A. PBC does.</p> <p>14 Q. Is PBC the largest payer of transshipment 15 fines in the system?</p> <p>16 A. Being the largest bottler, yes.</p> <p>17 Q. Do you know, say for the year 2015, what -- or 18 any recent year that you're familiar with, what the 19 percentage of the total fines for transshipping are paid 20 by PBC versus all other bottlers?</p> <p>21 A. Not aware of the percentages, the exact 22 percentages.</p> <p>23 Q. Is it your understanding that it is less than 24 or equal to or more than 80 percent of the transshipment 25 fines paid?</p>	<p>1 MR. QUINN: Let me just, Mr. Lewis, make sure 2 that Mr. Ragain is finished with his question --</p> <p>3 THE WITNESS: Absolutely.</p> <p>4 MR. QUINN: -- and then answer, so that we 5 don't have this misunderstanding.</p> <p>6 THE WITNESS: Absolutely.</p> <p>7 MR. RAGAIN: I'm sorry, read it back again.</p> <p>8 (The reporter read back the requested portion 9 of testimony.)</p> <p>10 BY MR. RAGAIN:</p> <p>11 Q. Are you not concerned, sir, with the amount of 12 transshipping fines paid on an annual basis by PBC?</p> <p>13 A. I am concerned.</p> <p>14 Q. How much in transshipment fines did PBC pay in 15 the year 2015?</p> <p>16 A. Millions.</p> <p>17 Q. More than three million?</p> <p>18 A. Lots of millions.</p> <p>19 Q. More than 10 million?</p> <p>20 A. Material, yes.</p> <p>21 Q. More than 10 million, sir?</p> <p>22 A. Yes.</p> <p>23 Q. More than 15 million?</p> <p>24 A. Material.</p> <p>25 Q. Who would be able to tell me, at PBC, how much</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICOJune 19, 2017  
61-64

Page 61	Page 63
<p>1 the transshipping fines were in a given year?</p> <p>2 A. A lot would be able to because it -- it's --</p> <p>3 it's in the P and L item. It's a big P and L item.</p> <p>4 Q. Why can't you tell me, sir?</p> <p>5 MR. QUINN: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: My point is it's material, so</p> <p>8 that's all I'm --</p> <p>9 BY MR. RAGAIN:</p> <p>10 Q. Why didn't you tell me, sir?</p> <p>11 MR. QUINN: Objection to the form of the</p> <p>12 question. It's argumentative.</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. The objection is made. Go ahead and answer.</p> <p>15 A. It's substantial.</p> <p>16 Q. Is PBC the largest transshipper of PepsiCo</p> <p>17 bottle and can CSD products?</p> <p>18 A. PBC, we're not a -- we're not -- we don't</p> <p>19 tran- -- we're not a transshipper. So when you say,</p> <p>20 "transshipper," we're not -- we don't wake up and say,</p> <p>21 let's figure out how to move product from an authorized</p> <p>22 area to a nonauthorized area. So we're not a</p> <p>23 transshipper. That -- that's -- you know, I don't -- I</p> <p>24 wouldn't -- when you say, PBC's a transshipper, we're</p> <p>25 not a transshipper. It's not what we do.</p>	<p>1 orientation.</p> <p>2 Q. Then, that's fine. All I'm trying to do is --</p> <p>3 what can I call them so that you'll know what I'm</p> <p>4 talking about?</p> <p>5 A. I want to focus on the product. The product</p> <p>6 is transshipped product, yes.</p> <p>7 Q. Should I call them the transshipping bottlers?</p> <p>8 Should I call them the offending bottlers? I've seen</p> <p>9 it -- I've seen it referred to in different ways in this</p> <p>10 case. So I'm just trying to say, we're going to be</p> <p>11 talking about --</p> <p>12 A. I would say the source of the transship- --</p> <p>13 Q. Please let me finish, sir.</p> <p>14 A. Sorry.</p> <p>15 MR. QUINN: Do you want him to answer now?</p> <p>16 MR. RAGAIN: No, I want him to let me finish</p> <p>17 my questions before he answers.</p> <p>18 MR. QUINN: But if I can just --</p> <p>19 BY MR. RAGAIN:</p> <p>20 Q. Mr. Lewis --</p> <p>21 MR. QUINN: -- say for the record, you --</p> <p>22 you're -- it's not a question when you start to</p> <p>23 provide a stream of consciousness --</p> <p>24 MR. RAGAIN: This record will speak for</p> <p>25 itself.</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. What do you call when -- when you're talking</p> <p>2 about this transshipment issue in the company -- inside</p> <p>3 your company, what do you call the offending bottler,</p> <p>4 the bottler whose product ends up in someone else's</p> <p>5 territory? If not the transshipper, what do you call</p> <p>6 them?</p> <p>7 A. If -- if it happens in our -- from our product</p> <p>8 source, obviously it happens with customers that we sell</p> <p>9 to and it's those customers who, in turn, are the ones</p> <p>10 that move it from an authorized territory to a</p> <p>11 nonauthorized territory. Those are the -- those are the</p> <p>12 real transshippers in the scheme of things because I</p> <p>13 don't have assets that take product made in our</p> <p>14 territory and shipped over to launch into independent</p> <p>15 bottling lines, so we are not transshippers.</p> <p>16 It happens with the customers and people that</p> <p>17 we sell to, product will move from authorized to</p> <p>18 unauthorized and we -- we have to deal with that swiftly</p> <p>19 and responsibly as I said earlier.</p> <p>20 Q. For purposes of discussion, though, what do</p> <p>21 you refer to the bottler whose product ends up where</p> <p>22 it's not supposed to? I'm just trying to put a label on</p> <p>23 it, so we can talk about it today, sir.</p> <p>24 A. I would call it transshipped product. I</p> <p>25 wouldn't say transhipper. That's a different</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. QUINN: -- thought of what it is that</p> <p>2 you're trying to do. The question should be simple</p> <p>3 and direct and that's why I object.</p> <p>4 MR. RAGAIN: Are you done?</p> <p>5 MR. QUINN: I am.</p> <p>6 BY MR. RAGAIN:</p> <p>7 Q. Mr. Lewis, I'm going to be asking you</p> <p>8 questions that involve activities by the bottler, that</p> <p>9 is the source of the transshipped product, the customers</p> <p>10 and the bottler whose territory the product ends up in.</p> <p>11 I just want to make sure we can effectively communicate.</p> <p>12 So what would you like me to call those</p> <p>13 various parties?</p> <p>14 A. May I speak now?</p> <p>15 Q. Yes.</p> <p>16 A. The way you just said it, source of bottler</p> <p>17 product, you outlined three distinct entities.</p> <p>18 Q. Okay. Is PBC the largest source of</p> <p>19 transshipped PepsiCo bottle and can CSD products?</p> <p>20 A. To my knowledge, yes.</p> <p>21 Q. Has PBC been the largest source of</p> <p>22 transshipped PepsiCo bottle and can CSD products for</p> <p>23 several years?</p> <p>24 A. To my knowledge, yes.</p> <p>25 Q. How many?</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICOJune 19, 2017  
65-68

<p style="text-align: right;">Page 65</p> <p>1 A. As many years as I've been in this job and so 2 I'd call it -- let's say, at least, you know, the last 3 10 years.</p> <p>4 Q. In terms of payment of transshipment fines, 5 how does the amount of transshipment fines paid by PBC 6 compare to the amount of transshipment fines paid by the 7 independent bottlers?</p> <p>8 A. I don't have specific information on what the 9 independent bottler group is paying on fines, so I -- I 10 can't make that distinction. But I would, obviously, 11 say that what the source product from PBC's territory 12 has obviously been, you know, material and -- and much 13 higher than the independent bottling system.</p> <p>14 Q. Why is that, sir?</p> <p>15 A. Our size.</p> <p>16 Q. Any other reasons?</p> <p>17 A. Complexity.</p> <p>18 Q. What do you mean by "complexity"?</p> <p>19 A. Complexity of -- geographical complexity, 20 competitive complexity, customer complexity, bills, 21 bottle bills, those type of things that can come into 22 play, certain geographies. Taxes, now, are something 23 that grow -- create another level of complexity in some 24 cases that's being instituted now.</p> <p>25 Q. Do you know how much Northern Bottling paid</p>	<p style="text-align: right;">Page 67</p> <p>1 THE COURT REPORTER: I'm sorry, into their 2 what?</p> <p>3 MR. RAGAIN: Territories.</p> <p>4 THE WITNESS: If product was found outside, 5 again, of the selling area, that would be -- it 6 would be communicated internally, yes.</p> <p>7 BY MR. RAGAIN:</p> <p>8 Q. And does the source bottler, if it -- if it is 9 transshipment of PBC product from one territory into 10 another PBC territory, does the source bottler in that 11 situation get fined?</p> <p>12 A. That is investigated internally and -- no, 13 we've not had a practice of that.</p> <p>14 Q. Why not?</p> <p>15 A. Doesn't happen -- first of all, it doesn't 16 happen often, a lot at all. And circumstances we -- 17 that we look at, investigate, you know, we deem that 18 either are nonmaterial or, you know, we -- we have 19 clarity on what happened and we're able to put 20 preventative measures in place to make sure that didn't 21 happen again.</p> <p>22 Q. Is there a reason, to your knowledge, sir, why 23 PBC would be the source bottler responsible for paying 24 the largest amount of fines for transshipping of its 25 product into its independent bottlers' territory, but</p>
<p style="text-align: right;">Page 66</p> <p>1 last year in transshipment fines?</p> <p>2 A. No, sir.</p> <p>3 Q. Are you aware of any bottler, independent 4 bottlers that paid zero last year in transshipment 5 fines?</p> <p>6 A. I'm not aware of who those bottlers were that 7 did not pay any fines, no.</p> <p>8 Q. Are you aware that there are independent 9 bottlers that paid zero last year in -- in transshipment 10 fines?</p> <p>11 A. I don't -- I'm not aware of the specific 12 bottlers. I would like -- I would imagine that -- of 13 the bottlers that we have, that some probably would not 14 incur fines, so I would be reasonable enough to 15 determine that as well, yes.</p> <p>16 Q. Does the transshipment enforcement program 17 apply to PBC in connection with transshipment of 18 PepsiCo -- scratch that, please. I'm going to start 19 over.</p> <p>20 Am I correct, for the transshipment fine 21 process to begin, the bottler in whose territory the 22 product is found needs to make a report of some kind?</p> <p>23 A. Yes.</p> <p>24 Q. Do PBC facility managers report transshipment 25 of other PBC facility's product into their territories?</p>	<p style="text-align: right;">Page 68</p> <p>1 that, as you put it, it rarely happens that PBC is the 2 source bottler of transshipped product into other PBC 3 territories? Why would that be?</p> <p>4 A. Well, I'd say when it happens, sometimes 5 people -- it could be gray in some cases. Some people 6 don't report it, but in the cases that you find it, it 7 tends to be a small amount, you know, small amounts and 8 it's quickly traced back -- because again, we move 9 swiftly on these things, so our ability once somebody 10 finds out something, you call and say, hey, I found -- 11 I'm in -- I'm in Virginia and I see product from 12 Philadelphia, maybe, in the market. I'd say, how did 13 this product make it to the market? We trace it back. 14 We do an investigation on it and most of the time we're 15 able to find out what had happened in this particular 16 instance and then put a correct-and-solve in place, and 17 most of the time going forward, it doesn't happen again.</p> <p>18 So transshipping fines or the time it takes, 19 the investigative costs, the time it takes your people, 20 it's very disruptive. So if I found a few cases in 21 Maryland, Virginia from Philadelphia, you know, smaller 22 quantity that I deem to happen when I investigated it 23 happened from a very rare circumstance. Somebody brings 24 something down in a van, I'm not going to put a lot of 25 people and a lot of time against something that we have</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
69-72

<p style="text-align: right;">Page 69</p> <p>1 under control. And these things are very, very costly. 2 These investigations, the time spent on this, we 3 understand the importance of it, but it's very, very 4 time consuming and very costly. We don't like 5 transshipping fines at all. It's something that 6 absolutely hurts the P and L for our people. It's a 7 complete negative in our business. So our goal is to 8 you know, prevent it and where it comes up, quickly stop 9 it and prevent it from happening again.</p> <p>10 Q. Thank you.</p> <p>11 I'd like to go back to -- just so we're clear, 12 go back to talking about PBC product being transshipped 13 into the territories of independent bottlers now.</p> <p>14 Since 2010, has the amount of PBC product 15 transshipped into the territories of independent 16 bottlers increased, decreased each year or stayed about 17 the same each year?</p> <p>18 A. My understanding is there's been some 19 variation throughout the years, but it still remains a 20 very, very high amount and not -- not decreasing.</p> <p>21 MR. RAGAIN: I need to take a break.</p> <p>22 THE WITNESS: Okay.</p> <p>23 THE VIDEOGRAPHER: We're going off the record 24 at 10:00 a.m. And this is the end of Disc 1.</p> <p>25 (Brief recess.)</p>	<p style="text-align: right;">Page 71</p> <p>1 to a place where it's going down or eliminate it, 2 which, you know, very, very hard to do at this 3 stage.</p> <p>4 Most of the complexity, most of the issue is 5 in the northeast of the United States, by the way, 6 so that -- that's where the -- the majority of this 7 problem exists and challenge exists in our company. 8 And if we're able to, in the northeast, start to 9 get it under control, it would -- it would benefit 10 the system holistically. But -- but so there is -- 11 there is certainly more work to do. We absolutely 12 have more work to do here.</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. Do you know where the product is coming from 15 that's being transshipped into Northern Bottling's 16 territory, sir?</p> <p>17 A. Do I know where the product is -- say that 18 again. I'm sorry.</p> <p>19 Q. Do you know where the PBC source is for the 20 product that's being transshipped into Northern 21 Bottling's territory?</p> <p>22 A. The product source I thought -- I believe I 23 did know where it was traced back to.</p> <p>24 Q. Where is that?</p> <p>25 A. I think it was Florida.</p>
<p style="text-align: right;">Page 70</p> <p>1 THE VIDEOGRAPHER: We're back on the record at 2 10:11 and this is the beginning of Disc 2.</p> <p>3 BY MR. RAGAIN:</p> <p>4 Q. Mr. Lewis, if PBC transshipment fines for 5 bottle and can CSD product transshipped into the 6 territories of independent bottlers has not decreased 7 over the years, would you agree with me that the 8 transshipment enforcement program is not working to 9 prevent transshipment?</p> <p>10 MR. QUINN: Object to the form of the 11 question.</p> <p>12 THE WITNESS: What I believe, the program 13 needs work because we're not at all happy with 14 escalating fines; however, what's happened in the 15 marketplace again, this increasing complexity, 16 complexity -- geographical complexity, competitive 17 complexity, you know, pricing complexity, all those 18 type of things have made the situation much harder, 19 so it's really incumbent upon -- what -- this Blue 20 Council System [sic], I know, are looking at a 21 number of different things to drive improvement. 22 There's no doubt we have to improve where we are, 23 but the marketplace is getting more and more 24 complex. We have to recognize that complexity in 25 all of our efforts, the system efforts to get this</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And that's not in the northeast, is it, sir?</p> <p>2 A. That's not the northeast. I said the 3 majority. I didn't say all the problem was in the 4 northeast. I said the majority of the problem was in 5 the northeast.</p> <p>6 Q. Would you agree with me that the product we're 7 dealing with in this lawsuit is not product being 8 transshipped from the northeast into North Dakota?</p> <p>9 A. The product that you just referenced -- the 10 example you just referenced was not from the northeast.</p> <p>11 Q. And do you know, is the product that's 12 being -- that has been transshipped into Northern 13 Bottling's territory, has it come from more than one 14 source around the country, more than one PBC source 15 around the country?</p> <p>16 A. I'm not -- I'm familiar with that. If that's 17 been outlined, I'm not familiar with -- I'm not familiar 18 with more than one source.</p> <p>19 Q. So if I ask you if you knew how many different 20 PBC sources the product was coming from, you wouldn't 21 know the answer to that?</p> <p>22 MR. QUINN: Object to the form of the 23 question.</p> <p>24 THE WITNESS: You asked me in this case of the 25 product that was reported sourced in the -- in</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
73-76

<p style="text-align: right;">Page 73</p> <p>1 the -- did I know where the product was sourced 2 from, and I referenced it was sourced from the 3 Southeastern United States and that's what I would 4 say, yeah. I'm not -- I'm not familiar with it 5 from other products from other parts of the 6 country, going into that specific reference you 7 just made a few minutes ago.</p> <p>8 BY MR. RAGAIN:</p> <p>9 Q. Have you ever received discipline from PBC or 10 PepsiCo because the transshipping -- transshipment fines 11 paid by PBC have not decreased over the years?</p> <p>12 A. Have I personally received discipline?</p> <p>13 Q. Yes.</p> <p>14 A. I have not received any discipline, but I have 15 received and been on the receiving end of conversations 16 around the need to improve our outlook there because it 17 is an item in the controlled cost line of the P and L. 18 And so anything in controllable costs that go up on any 19 given year get identified as opportunistic and are 20 put -- bucketed in discussions as we get, you know, 21 throughout -- throughout the parts of the year as we go 22 into the new year, that along with, you know, maybe over 23 time or waste or other items get bucketed and here's 24 some items that need to be focused upon, what are we 25 doing to get a handle on this and get this thing under</p>	<p style="text-align: right;">Page 75</p> <p>1 compensation, then I can answer that and say yes, it was 2 the transshipment fines.</p> <p>3 But yes, there are a myriad of things that 4 are, you know, pluses and minuses that go into the 5 profit and loss statement. So I cannot specifically say 6 that that's been the one factor, but it's a negative. 7 There's nothing positive about transshipping fines on my 8 compensation or my performance appraisal. It is -- it 9 is a negative because it hurts the profit of the 10 organization. It's -- it's a negative, complete 11 negative.</p> <p>12 Q. Since the year 2010, Mr. Lewis, has your 13 compensation ever been decreased?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. In what years?</p> <p>16 A. Maybe, was it -- let me ask you: What do you 17 define by "compensation," by the way? What do you mean, 18 like total --</p> <p>19 Q. What you're paid.</p> <p>20 A. What I'm paid? Yeah, relative to year over 21 year, yeah, I've had -- I've had years where I didn't 22 make what I made the previous year, yes, that's 23 happened.</p> <p>24 Q. And were you told the reasons why?</p> <p>25 A. Well, I knew the reasons why. I didn't have</p>
<p style="text-align: right;">Page 74</p> <p>1 control and what's driving it and what are we doing to, 2 more importantly, course correct for the future. So if 3 we see the type of improvement we need to see, not only 4 with just the improvement on the cost line, but also the 5 improvement in process to sustain efforts going forward.</p> <p>6 Q. Has your compensation, Mr. Lewis, ever been 7 decreased because the amount of transshipping fines paid 8 by PBC have not decreased over the years?</p> <p>9 A. Transshipping fines have a negative effect on 10 my compensation. That they -- they hurt the P and L and 11 being that the P and L -- delivering the profit and loss 12 statement plan is an important component of my 13 compensation. The fact that that has a negative effect 14 on the profit, does affect my compensation, yes, it 15 does.</p> <p>16 Q. Has your compensation ever been decreased 17 because the amount of transshipping fines paid by PBC 18 has not decreased over the years?</p> <p>19 A. I don't know if I would ever look at it and 20 specifically say transshipping fines have directly the 21 one factor that hurt my compensation. It's always a 22 number of things that would contribute to that. Again, 23 we're looking at the profit and loss statement. If that 24 was the only thing that stood out as a negative in the 25 profit and loss statement that decreased my</p>	<p style="text-align: right;">Page 76</p> <p>1 to be told. I know what -- I know what goes into the 2 compensation structure, so I already -- nothing that -- 3 no surprises here.</p> <p>4 Q. Were you ever told that your compensation was 5 being decreased because transshipment fines have not 6 decreased over the years?</p> <p>7 A. Not specifically because of transshipment 8 fines, but because of --</p> <p>9 Q. Thank you.</p> <p>10 MR. QUINN: Wait, let the witness finish his 11 answer, Mr. Ragain.</p> <p>12 You may finish.</p> <p>13 THE WITNESS: Am I allowed to?</p> <p>14 MR. RAGAIN: His voice dropped off there.</p> <p>15 MR. QUINN: No, he said "because." You know 16 that, Jim. The tape will reflect -- finish your 17 answer, please.</p> <p>18 THE WITNESS: I was -- never discussed my 19 compensation -- when it had a variation and 20 decline, it was not explained to me it was declined 21 because of transshipping. It was bucketed with 22 controllable cost performance in total, which 23 transshipping fines are part of controllable costs 24 as is labor, as is waste, utilities, supplies, all 25 those type of things. So it's bucketed in</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
77-80

Page 77	Page 79
<p>1 controllable costs in total, which I would have 2 direct conversations over with the senior level. 3 BY MR. RAGAIN: 4 Q. You mentioned the Blue System Council in 5 connection with, I think, efforts to improve the 6 transshipping policy or words to that effect. 7 A. Uh-huh. 8 Q. Is there something going on currently with 9 respect to -- well, what is the Blue System Council? 10 A. It's a -- right now it's a committee of 11 independent bottlers and some members of the NAB 12 executive team who sit on a committee and work 13 towards -- you know, working towards business, growing 14 the business, business challenges, business issues, 15 progressiveness and so there are a number of topics that 16 the council is working against to move the businesses 17 forward, move the partnerships forward. 18 Q. Is one of those topics how to prevent 19 transshipment? 20 A. Yes. 21 Q. And when did that topic get added to the Blue 22 System Council's agenda? 23 A. Well, the Blue Council has only been assembled 24 now for a little bit over a year now. So the minute 25 the -- once the Blue Council System [sic] came together,</p>	<p>1 activity. 2 Q. How long have you been in your present 3 position, sir? 4 A. Five and a half years. 5 Q. And -- and what position were you in 6 immediately preceding your current position? 7 A. I was responsible for the Southeastern United 8 States, same -- same capacity, just a smaller 9 geographical footprint. 10 Q. So since 2010, what all has PepsiCo done to 11 try and stop PBC from being the largest source of 12 transshipped PepsiCo B and C CSD products into the 13 territories of independent bottlers? 14 MR. QUINN: Object to the form of the 15 question. 16 THE WITNESS: PBC has been very focused on 17 reducing and eliminating transshipment across the 18 territories. Again, the majority of the challenge 19 resides in the Northeast United States. We have, 20 obviously, recognized the complexities that have 21 occurred in the marketplaces as the marketplace 22 continues to evolve. We have been certainly very 23 open and transparent working with independent 24 bottlers in a system as a whole to communicate 25 issues, resolve swiftly.</p>
<p style="text-align: center;">Page 78</p> <p>1 that was identified as one of the, you know, key topics 2 for advancement. 3 Q. And -- and what is the blue -- is it Blue 4 Council or Blue System Council? I can't remember. 5 A. Blue System Council. 6 Q. What is the Blue System Council doing right 7 now in connection with preventing transshipment? 8 A. Well, there is committee, small sub -- 9 subcommittee in place that is working on trying to 10 advance the -- the technology in that regards to more 11 accurate tracking of product that moves throughout the 12 system, so that, again, we're, you know, more realtime, 13 faster speed and -- and certainly greater controls of 14 product exiting warehouses throughout the country, not 15 just in company-owned operations, but also in 16 independent-owned operations. 17 Q. What else, if anything? 18 A. That was the last -- that was the latest 19 update that we had even as early as, what, last -- last 20 Thursday. There was an update on our technological 21 process where some of these testing things were and 22 there was going to be, now, even a smaller committee or 23 additions to the committee put in place to help navigate 24 that plus, you know, continued efforts to come up with 25 some ideas to help mitigate and, again, prevent</p>	<p style="text-align: center;">Page 80</p> <p>1 There's been cases where we've had to cut 2 people off, you know, for long periods of time. 3 And we -- we end up losing business that way 4 because, you know, while they move territory from 5 authorized to unauthorized, there also was 6 legitimate business that those customers had 7 operated against, but we end up -- because we want 8 to send a statement and a signal that this policy 9 is -- is definitely enforceable on our end, you 10 know, sacrifice base business and gave up base 11 business losses to, you know, stand up the policy 12 for a whole because that's the right to thing to 13 do. 14 BY MR. RAGAIN: 15 Q. When you say "cut people off for long periods 16 of time" -- 17 A. Uh-huh. 18 Q. -- have you ever -- have you ever cut a 19 customer -- well, first of all, what customers are you 20 talking about that you've cut off for long periods of 21 time because they were transshipping product? 22 A. Their products in the -- going back to when I 23 was in the southeastern days, the products -- the 24 customers were cut off. There was -- just for an 25 example or two, Cromer was one. It was in the</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
81-84

<p style="text-align: right;">Page 81</p> <p>1 Carolinas. They were -- we cut them off for over a 2 year. You know, we're going through this with Vistar 3 in -- in Florida right now, in South Florida. So there 4 are -- there are examples where we've had to -- as you 5 go through the multistep process, as you get to that 6 last step and you don't see the customer working with 7 you and again, not agreeing to execute what they said 8 they would agree to, you have to take those extreme 9 measures and consequences to stand up your policy. And 10 we've had to -- we've had to make those decisions.</p> <p>11       And again, it's cost us business, but it also 12 has, you know, in our minds, restricted those customers 13 at least from the ability to ship product from 14 authorized to unauthorized, which they were doing. And 15 that's -- you know, we had to stand behind some of those 16 things. They're not -- none of -- none of this is easy. 17 It's difficult to have to experience that, but you have 18 to -- the policy is the policy and we intend to stand 19 behind it.</p> <p>20       Q. How much money has it cost you when you've cut 21 these customers off for periods of time?</p> <p>22       A. You know, over the course of a year, it can 23 cost you millions of dollars of revenue of lost business 24 to -- because all of the business goes to your 25 competition.</p>	<p style="text-align: right;">Page 83</p> <p>1       Q. Now, you mentioned Cromer? 2       A. I believe that was the name of the operator 3 that -- that we had shut off going back to that window 4 of time you had mentioned. 5       Q. But you're reselling to Cromer now? 6       A. When they -- I don't know. Yeah, I don't know 7 the nature of the relationship today with them, but I 8 know at that time after over a year had elapsed, we had 9 gone back in with them. They wanted to come back in. 10 We went through the agreement procedures again. You 11 know, they talked about their commitment not to move 12 product again to an unauthorized area ever again. And 13 then we went back in on a very, very small basis to show 14 that they can prove that they weren't able to do that. 15 We put some, you know, again, you know, very focused 16 tracking on that and we got to a place where I don't 17 think the business ever got back to where it was, but we 18 were able to get some of our assets back in the market 19 that we had before. And we also restricted any product 20 from moving out of that area. 21       So we were able to prove that, but the 22 business is certainly nowhere at -- at that time we got 23 back, it was nowhere near what it had been before. But 24 again, our ability to reinforce the policy was more 25 important and show that we're not going to -- we're</p>
<p style="text-align: right;">Page 82</p> <p>1       Q. On a percentage of your P and L, can you -- 2 can you give me some idea of how much you're talking 3 about?</p> <p>4       A. Well, if you're inside the market, it could 5 be -- you know, it could be substantial. It could be 6 material. It could be, you know, several points of 7 revenue. If you're inside a -- a market, you know, if 8 you're inside a region, it may go down a little bit 9 lower. And then, obviously, if you're in a national 10 footprint, it's much smaller. But if you're in the 11 local market, losing a Vistar for a year or more in 12 the -- in South Florida, is a -- you know, that's a 13 pretty big hit. Losing a Cromer in the Carolinas, you 14 know, where you had a pretty good marketshare of their 15 existing business inside the market is a pretty 16 significant loss to that market.</p> <p>17       So the -- the losses are certainly more 18 substantial locally and really do affect the P and L 19 where you have to make other cuts in the business. You 20 may have to lay people off. You certainly have to 21 eliminate routes in some cases or take other 22 cost-cutting measures to try to offset the losses that 23 you have on the -- on the sales that you were getting on 24 the -- on the business that was legitimate inside your 25 territory.</p>	<p style="text-align: right;">Page 84</p> <p>1 going to adhere to our contracts, so we did what we had 2 to do. And at some point, the customer acknowledges 3 they did the wrong thing and we went back to the table 4 on a very limited basis to test the waters again with 5 them and to eventually where you get back to a somewhat 6 normal relationship, but usually those things never go 7 back to the way they were because competition has seized 8 a lot more of the assets that you had and you're just 9 not in a place where you were before, but at least 10 you're back in and hopefully can work, to some sort of 11 semblance, back to what you were, but it will take some 12 time.</p> <p>13       Q. Approximately, what year was it that you cut 14 Cromer off?</p> <p>15       A. That had to be around the -- the time you're 16 talking. It had to be around '010, from what I recall. 17 That was -- that was about the time that that had 18 happened because we had that -- we had that issue bubble 19 up in the Carolinas and -- with that bottling group and 20 we had -- we took action swiftly and strongly to the 21 point where we said we're not going to just not sell 22 them and made the decision.</p> <p>23       Q. But transshipment fines as a whole have not 24 decreased since 2010?</p> <p>25       A. They did decrease in the Southeast United</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
85-88

<p style="text-align: right;">Page 85</p> <p>1 States. At that time, they did. But -- but nowhere 2 close to the business loss that we occurred [sic]. 3 So -- so I go back to it, it was -- it's a losing deal 4 all the way around. No one likes transshipping fines or 5 transshipping activity or things of that nature. So 6 yeah, the fines in the southeast materially went down, 7 the sales declines were not offset by that decline in 8 fines and, you know, we -- we just had to live with it. 9 It was just one of those things where we had to stand 10 the policy and we -- you know, the -- the team took the 11 hit. There was really nothing else to go do. We 12 couldn't -- that was the only way around it. You had to 13 stand up the policy. So, you know, the good thing is 14 you -- you get through that one year and then now you 15 don't have to -- you know, now you can, kind of, build 16 from there going forward. But it's painful in that -- 17 that first year for the P and L, but the right thing to 18 do. So nobody would debate that was the right thing to 19 do. We'd do it again the same way and we have done 20 it again.</p> <p>21 Q. Did you ever consider cutting them off 22 entirely forever, permanently, just to make an example 23 of how serious PepsiCo or PBC is about enforcing 24 transshipment rules?</p> <p>25 A. Forever seems to be pretty extreme. Pretty</p>	<p style="text-align: right;">Page 87</p> <p>1 time, please?</p> <p>2 BY MR. RAGAIN:</p> <p>3 Q. My question was: Have you ever permanently 4 cut off a customer because of transshipment problems 5 with that customer, not other problems, transshipment 6 problems?</p> <p>7 A. Transshipping, certainly, could have been one 8 of the reasons, not exclusively the reason, but could 9 have been one of the reasons. Could it have been the 10 only reason in a case or two? I don't know. Maybe, 11 maybe not. I don't -- I don't recall, but I know that 12 we've walked from certain customers due to various 13 reasons of noncompliance.</p> <p>14 Q. While employed at PepsiCo, sir, have you made 15 any specific suggestions as to what actions PepsiCo 16 should take to try and stop PBC from transshipping 17 PepsiCo bottle and can CSD products into the territories 18 of independent bottlers?</p> <p>19 MR. QUINN: Object to the form of the 20 question.</p> <p>21 THE WITNESS: Yeah, I would -- I would -- the 22 only thing I would -- so again, PBC is not a 23 transshipper of product into bottler territories. 24 Have I -- do I sit at the table as a willing 25 partner, an active partner to help come up with</p>
<p style="text-align: right;">Page 86</p> <p>1 extreme. We felt in this case, you know, over a year's 2 time frame was a -- was a harsh penalty and a strong 3 signal. Now, if there's a -- solely another repeat 4 effort, then you probably would be talking about a much 5 longer window of time to maybe include, you know, never 6 shipping to you again, if they were to do that again, 7 yeah. So I think we would have to take a look at that.</p> <p>8 Q. To your knowledge, has PBC or PepsiCo ever 9 permanently cut off a customer due to transshipping?</p> <p>10 A. There have -- there have been some examples 11 that I can recall where we didn't ship people ever again 12 just because of their lack of compliance. It could have 13 been diverting product to an unauthorized area. It 14 could have been something else. And because it happened 15 over and over again or to the degree that it happened 16 and the lack of, you know, alignment on executing your 17 agreement led to a place where we just walked away and 18 again, all the business would end up going to 19 competitors. So there's cases where they are exclusive 20 Coke operators that are out there, yes, there are, the 21 ones that we've chosen to not do business with.</p> <p>22 Q. And my question was due to -- specifically, 23 due to transshipping problems with that customer?</p> <p>24 MR. QUINN: Objection. Asked and answered.</p> <p>25 THE WITNESS: Can you, I'm sorry, one more</p>	<p style="text-align: right;">Page 88</p> <p>1 ideas to help limit, reduce, eliminate the source 2 product ending up in IBs, yes.</p> <p>3 We take this, again, very seriously. We don't 4 like the fines. I don't like the disruption. It's 5 not just about the fines. Disruption is also a 6 very important part of that, not only for our 7 people, but also for the IBs who have to spend time 8 on those. So eliminating disruption and the fines 9 would be an ideal place to be in. And so sitting 10 at the table working with the Blue Council or 11 working with various teams to come up with better 12 ideas on tracking, on ways to eliminate -- reduce 13 the complexity or manage, quite frankly, through 14 the complexity because we're not going to be able 15 to eliminate the complexity here. There's going to 16 be a competitor that wants to do business with 17 these folks that has legitimate business inside the 18 geography and we have to -- we're going to have to 19 acknowledge that. And so the ability to put ideas 20 on the table that create solutions to drive system 21 success is -- is absolutely what I strive for with 22 this -- with this committee and what we try to do 23 inside our four walls.</p> <p>24 BY MR. RAGAIN:</p> <p>25 Q. My question, Mr. Lewis, was: Have you made</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
89-92

<p>Page 89</p> <p>1 any specific suggestions as to how to stop PBC from 2 transshipping into the territories of independent 3 bottlers?</p> <p>4 MR. QUINN: Same objection.</p> <p>5 BY MR. RAGAIN:</p> <p>6 Q. Not whether you've sat at the table while 7 other people have, but have you personally made any 8 specific suggestions?</p> <p>9 MR. QUINN: Same objection.</p> <p>10 THE WITNESS: Relative to PBC is not a 11 transshipper of product, relative to stopping PBC 12 source product evolving into bottling -- 13 independent bottling territories, yes. I have sat 14 at the table. I have sat on conference calls and 15 offered points of views, opinions, solutions, ideas 16 to help move this effort forward in a productive 17 manner for IBs and for our system.</p> <p>18 BY MR. RAGAIN:</p> <p>19 Q. And IB is independent bottlers?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So tell me what those specific 22 suggestions you have made are?</p> <p>23 A. There have been various suggestions. They've 24 been suggestions on technology, the continuous 25 improvement of technology. The improvement of</p>	<p>Page 91</p> <p>1 really precise products. I've heard this idea and I've 2 been supportive of the idea, competitive product, doing 3 competitive assessment, understanding the nuances and 4 understanding the competitive marketplace we -- we 5 operate in. I think that's very, very important. So 6 I've heard that idea surface by multiple people of 7 pulling that together. Communication is essential. A 8 tighter or quicker process by which people are brought 9 up to speed faster and can react faster to anything 10 that's involved in this area, not just the, hey, I've -- 11 I've got product in my area now, I want an investigator, 12 but -- but the customers, the geography, you know, we 13 could look at specifics on the pricing elements of that. 14 So I've heard suggestions of that, as well, come from a 15 number of people sitting around the table over the 16 years.</p> <p>17 Q. While you've been at PBC, have you heard any 18 discussions or suggestions made as to changing where the 19 transshipment fines hit on the P and L as a means to 20 perhaps disincentivize PBC from being the largest source 21 of transshipped products?</p> <p>22 A. It's all one P and L at the end of the day 23 anyway. So there's one PBC P and L that all the fines 24 drop into, so it adversely affects PBC's performance as 25 a whole. So, you know, left pocket, right pocket, I</p>
<p>Page 90</p> <p>1 communication. Taking a holistic look at the 2 complexity, competitive elements, you know, so we can, 3 you know, understand more transparency around the 4 competitive environment. That's something that, you 5 know, we -- we should look to get, you know, more 6 familiar with, so I think mainly technology, 7 communication and competitive landscape, understanding 8 those things.</p> <p>9 Q. Since 2010, Mr. Lewis, have you heard anyone 10 else make a specific suggestion as to what actions 11 PepsiCo could take to try and stop PBC from being the 12 largest source of transshipped product into independent 13 bottler territories that you particularly thought was a 14 good idea?</p> <p>15 A. Specifically inside our company or outside our 16 company or all of the above?</p> <p>17 Q. All of the above. Whatever you've heard that 18 you thought was a good idea.</p> <p>19 A. Oh, I think the -- what we're talking about 20 now in terms of technology, in terms of being able to 21 get more precise on a greater number of products that 22 leave the warehouse, again, across our system and the IB 23 system is something that I think is a really, really 24 good idea. We've got to be able to track more than just 25 full pallets. We've got to be able to track, you know,</p>	<p>Page 92</p> <p>1 don't, you know, know if there's any distinctive answer 2 than that. At the end of the day, it hits my P and L, 3 what I'm responsible for. And whether you're in a 4 regional market or headquarters, you're going to be held 5 equally responsible for any, you know, sort of 6 contributions or performance related to -- to the 7 manner -- to that matter.</p> <p>8 Q. My question, Mr. Lewis, was: Have you heard 9 any discussions about changing where the fines hit on 10 the P and L?</p> <p>11 A. I'm sorry. Am I allowed to speak?</p> <p>12 I guess -- maybe I'm confused on your question 13 because there's only one P and L, so I don't know 14 what -- what you would change when it all hits one 15 P and L. It's not -- this doesn't reside in multiple 16 P and Ls. It's all in PBC now. So changing it to what, 17 I don't know what it would change to. It's in PBC now.</p> <p>18 Q. My question, sir, whether -- whether it would 19 make any difference or not, have you heard anyone make 20 that suggestion?</p> <p>21 MR. QUINN: Object to the form of the 22 question. Asked and answered.</p> <p>23 THE WITNESS: Have I heard anyone make that 24 suggestion? I'm confused by the question, to be 25 honest with you. So I would say --</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
93-96

<p style="text-align: right;">Page 93</p> <p>1 BY MR. RAGAIN: 2 Q. Okay. I'm sorry, go ahead. 3 A. No, go ahead. I'm sorry. 4 Q. All right. If I make the suggestion right 5 here today that where the fines get charged on your 6 P and L should be changed, in order to disincentivize 7 PBC from being the largest source of transshipped 8 products, have you ever heard anyone else, before today, 9 make that suggestion?</p> <p>10 MR. QUINN: Object to the form of the 11 question.</p> <p>12 THE WITNESS: I'm just not --</p> <p>13 BY MR. RAGAIN: 14 Q. Yes or no, sir? Have you ever heard anybody 15 make that suggestion?</p> <p>16 A. About changing the way it's reported in the P 17 and L?</p> <p>18 MR. RAGAIN: Read it back to him.</p> <p>19 MR. QUINN: Well, he just asked if you wanted 20 to know about changing where it's reported in the P 21 and L. That's what he just asked.</p> <p>22 BY MR. RAGAIN: 23 Q. Did you not understand my question, sir? 24 A. Yes, I don't understand it.</p> <p>25 BY MR. RAGAIN:</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Well, eventually I'm going to ask you how -- 2 if you know what -- what it is or if you've heard of 3 that, I'm going to ask you how it relates to the 4 transshipment problem, if that helps.</p> <p>5 A. I mean, if -- are you talking about know your 6 customer meaning -- I don't know what you mean when you 7 say "know your customer" rule." What are you talking 8 about? You mean, just -- tell me what you mean by that 9 and then I'll go from there.</p> <p>10 Q. To your knowledge, is there something in your 11 business called the "know your customer" rule?</p> <p>12 A. A rule, like a policy?</p> <p>13 Q. Just a rule. You know what a rule is, don't 14 you?</p> <p>15 MR. QUINN: Object to the form of the 16 question.</p> <p>17 THE WITNESS: I'm not sure what you're 18 referring to.</p> <p>19 BY MR. RAGAIN: 20 Q. Okay. Thank you. 21 Does Pepsi -- scratch that. 22 Does PBC make money from PepsiCo bottle and 23 can CSD products that are transshipped into the 24 territories of independent bottlers?</p> <p>25 A. Does PBC make money from source product that</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. I'm going to suggest to you today that you 2 change, make a change as to how the transshipment fines 3 are charged on your P and L in order to disincentivize 4 or attempt to disincentivize PBC from being the largest 5 source of transshipped product into the territories of 6 independent bottlers.</p> <p>7 Have you ever heard anyone else make that 8 suggestion?</p> <p>9 MR. QUINN: Object to the form of the 10 question.</p> <p>11 THE WITNESS: And that's what I don't 12 understand. It's in PBC's P and L today incenting 13 [sic] a change to disincent [sic] -- I'm not making 14 the connection. It's already in the P and L. So 15 to pull it out of the PBC P and L to disincent, 16 I'm -- I'm just not tracking.</p> <p>17 BY MR. RAGAIN: 18 Q. Apparently you've never heard anybody else 19 make that suggestion, correct?</p> <p>20 A. That particular suggestion, no.</p> <p>21 Q. All right. That's all I needed to know. 22 Thank you.</p> <p>23 Mr. Lewis, do you -- do you know what the 24 "know your customer rule" is?</p> <p>25 A. Specifically as it relates to what?</p>	<p style="text-align: right;">Page 96</p> <p>1 moves from an authorized area to a nonauthorized area?</p> <p>2 Q. Yes.</p> <p>3 A. Does PBC make money with the transshipping 4 fines -- the answer is no. Product is sourced from an 5 authorized to a nonauthorized and we pay transshipping 6 fines on it. The answer is no, we lose money on the 7 transaction.</p> <p>8 Q. Does PBC pay PepsiCo for the concentrate used 9 to make PepsiCo bottle and can CSD products?</p> <p>10 A. It's one P and L.</p> <p>11 Q. So is that yes or no?</p> <p>12 A. The concentrate is part of the PBC -- part of 13 the P and L, so it's all one. It's one and the same.</p> <p>14 Q. Is it a charge on your P and L or is it a 15 revenue on your P and L?</p> <p>16 A. It would be a revenue.</p> <p>17 Q. So PBC, to your knowledge, does not purchase 18 the concentrate for bottle and can CSD products --</p> <p>19 A. Oh, it's a -- it's a charge, but then we 20 have -- there's also -- you're talking about the 21 independent bottling system, there's a concentrate 22 component to the IBs. That, again, all goes under -- 23 it's all one P and L, so it's both. There's -- we -- we 24 certainly pay a concentrate on product that's -- that's 25 embedded into the P and L. And then we have concentrate</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
97-100

Page 97  
1 sales that extend to the balance of the system. That is  
2 also part of the PBC P and L. There's different line  
3 items, but when you get to the subtotal, it's all PBC  
4 P and L.

5 Q. My question is or was: Does PBC pay PepsiCo  
6 for the concentrate PBC uses --

7 A. There's a charge, yes. I'm sorry. I got ya.  
8 My bad.

9 Q. Does PBC, Mr. Lewis, turn a blind eye to the  
10 transshipment problem in part because it doesn't want to  
11 make the diverting customers upset or angry?

12 MR. QUINN: Object to the form of the  
13 question.

14 THE WITNESS: Our behaviors that I spoke about  
15 earlier, in terms of shutting off supply completely  
16 for extended periods of time, reflects our stance  
17 on how important we feel adhering to the policy is  
18 and taking those measures where even the case where  
19 it's dilutive in the P and L. Standing behind the  
20 policy is the right thing to do for the enterprise.  
21 So we have -- so we absolutely -- we've never  
22 turned a blind eye, don't have intentions of ever  
23 turning a blind eye on this topic.

24 BY MR. RAGAIN:

25 Q. Mr. Lewis, do the employees at PBC benefit in

Page 99  
1 talked about. And the fact is, you know, the people  
2 that we're selling to are customers, who most -- mostly  
3 also do business with our primary competitor and even  
4 other competitors in the market. So you have to price  
5 your products in a way that will solidify your business  
6 position with those operators. So we have a competitor,  
7 I guess is what I'm saying, we have to be mindful of.  
8 And retailers set their price, the marketplace pricing  
9 is set. The operators, you know, have their pricing  
10 expectations. Competition plays a role in how we  
11 navigate that -- navigate trying to get business and  
12 that obviously is going to vary a lot throughout the  
13 country. And that varies in company-owned bottling  
14 operations and it varies in franchise-owned bottling  
15 operations in the same manner.

16 Q. The competitor that you spoke of is Coca-Cola?

17 A. They're the primary competitor, but there are  
18 others. There's a White System, that we call it,  
19 there's a 7-Up competitor and they're now, you know,  
20 what we call Pure Place, you know, Red Bull and energy  
21 products and there's so many different new products that  
22 are on the market now. Individual owners of the brands  
23 call directly on some of these operators to sell their  
24 business, whether in the water business, whether in the  
25 tea business, whether in the energy business, you know,

Page 98  
1 any way from the -- from the fact that PBC is the  
2 largest source of transshipped products into the  
3 territories, exclusive territories of independent  
4 bottlers?

5 A. Well, it would be a very similar answer to  
6 what I gave earlier myself in that the fines are a  
7 negative. So the P and L that comes back when you have  
8 to pay fines ends up -- you end up losing profit on the  
9 transactions. And then if you have to cut people off  
10 and when you do cut people off, that obviously restricts  
11 future sales and it gives the competitors an advantage  
12 in your geography and that's a negative. So our  
13 incentive is to ensure everybody conducts business in  
14 our geographies, in our boundaries, in authorized  
15 boundaries and do it in a legitimate way day in and day  
16 out, so at the end of the day people do not, would not  
17 benefit, ultimately, from any sale of a product from an  
18 authorized area to a nonauthorized area because of  
19 implications of fines, cutting customers off and  
20 discipline where they could lose their jobs for it. So  
21 there is no inherent benefit of somebody wanting to ship  
22 product from an authorized area to a nonauthorized area.

23 Q. How does pricing of PepsiCo bottle and can CSD  
24 products factor into the transshipment problem?

25 A. Well, pricing is one of those complexities I

Page 100  
1 from a CSD perspective, it's primarily us, Coke and the  
2 7-Up bottling system.

3 Q. In your answers when you're referring to "a  
4 competitor out there," were you referring to Coke?

5 A. Primarily, yes.

6 Q. In the case of Northern Bottling in this  
7 lawsuit, do you know who the distributor is that's  
8 selling PBC product into the exclusive territory of  
9 Northern Bottling?

10 A. I heard a reference it's Core-Mark.

11 Q. And who is Core-Mark?

12 A. The national distributor. I mean, a pretty  
13 large scale distributor.

14 Q. Of?

15 A. Distributor of packaged goods, consumer  
16 packaged goods.

17 Q. Am I correct that Coca-Cola would also be  
18 Northern Bottling's primary competitor in its exclusive  
19 territory --

20 A. I can't make that --

21 Q. -- on C and D products?

22 A. I would -- if I'm making a bet, I would say  
23 they could be, but I'm not -- you know, I don't live in  
24 that marketplace or work in that marketplace, so it's  
25 not up for me to determine who their primary competitors

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
101-104

Page 101	Page 103
<p>1 are.</p> <p>2 Q. If Northern Bottling is effectively competing</p> <p>3 with Coke in its exclusive territory and its pricing is</p> <p>4 in line with or lower than Coke's pricing, is there</p> <p>5 something wrong, in your view, with Northern Bottling's</p> <p>6 pricing structure?</p> <p>7 MR. QUINN: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: Yeah, I'm at all not -- bottlers</p> <p>10 can set their own pricing, so I'm not -- I'm not at</p> <p>11 all one to weigh in on what their pricing</p> <p>12 strategies are and how they want to compete against</p> <p>13 their competitors in their marketplace. It's</p> <p>14 not -- that's not something that I spend any time</p> <p>15 against or would even be close to being the subject</p> <p>16 matter on one or the other, whether it was -- so I</p> <p>17 can't weigh in on that.</p> <p>18 BY MR. RAGAIN:</p> <p>19 Q. How would you characterize or describe for me</p> <p>20 the goal of a -- of an independent bottler in terms of</p> <p>21 competing with Coke in its territory?</p> <p>22 A. How would I describe -- say that again, I'm</p> <p>23 sorry.</p> <p>24 Q. How -- how would you describe what -- what is</p> <p>25 the goal of an independent bottler in terms of competing</p>	<p>1 BY MR. RAGAIN:</p> <p>2 Q. Generally speaking, sir, if you're beating</p> <p>3 Coke in your territory, isn't that a -- a pretty good</p> <p>4 indicator that your pricing is not too high?</p> <p>5 MR. QUINN: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: What's beating Coke mean?</p> <p>8 BY MR. RAGAIN:</p> <p>9 Q. Selling more product, having the largest</p> <p>10 marketshare in your territory vis-a-vis Coke.</p> <p>11 MR. QUINN: Same objection.</p> <p>12 THE WITNESS: Okay. And I'm trying to</p> <p>13 determine, you have a higher marketshare than them,</p> <p>14 okay, and that leads to what, that you're --</p> <p>15 BY MR. RAGAIN:</p> <p>16 Q. That leads you to having a larger marketshare</p> <p>17 than Coke?</p> <p>18 A. Yeah.</p> <p>19 Q. And would you say that if somebody, generally</p> <p>20 speaking --</p> <p>21 A. It's a good thing, by the way, to have a</p> <p>22 higher marketshare than Coke. That's a really good</p> <p>23 thing.</p> <p>24 BY MR. RAGAIN:</p> <p>25 Q. Thank you.</p>
<p>1 with Coke in that independent bottler's exclusive</p> <p>2 territory?</p> <p>3 A. Well, the goal, I believe, is to increase your</p> <p>4 market share profitably as possible.</p> <p>5 Q. As compared to your Coke?</p> <p>6 A. As compared to your competitors, yes.</p> <p>7 Q. So, just looking at the pricing structure, if</p> <p>8 Northern Bottling is effectively competing with Coke in</p> <p>9 its exclusive territory and its pricing is in line or</p> <p>10 less than Coke's, would -- in your view, would Northern</p> <p>11 Bottling's pricing be too high?</p> <p>12 MR. QUINN: Object to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I don't know enough about the</p> <p>15 marketplace to make that determination. I don't --</p> <p>16 I don't -- there's -- there's marketshare</p> <p>17 differences. There's class of trade differences.</p> <p>18 There's portfolio differences. There's so much</p> <p>19 involved with doing an assessment on that, there's</p> <p>20 no way, without even understanding their business,</p> <p>21 make a determination on whether or not they're --</p> <p>22 if I just give them one optic [sic] saying, are</p> <p>23 they competitive or not, that's impossible for</p> <p>24 anybody to do without, you know, a hell of lot more</p> <p>25 information.</p>	<p>1 Now, in that situation, generally speaking,</p> <p>2 would you say that the pricing structure of that</p> <p>3 independent bottler is good or bad?</p> <p>4 A. Well, hey --</p> <p>5 MR. QUINN: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Yeah, pricing is not an area</p> <p>8 that it's -- it's black or white. You can't -- you</p> <p>9 can't -- no one can give me a price, say, well,</p> <p>10 here's a look at pricing, is that the right thing</p> <p>11 or not? There is so much analytics that go into</p> <p>12 the business proposition here that I -- I cannot</p> <p>13 begin to make an assessment on his pricing relative</p> <p>14 to his marketshare off of this conversation.</p> <p>15 That's not -- that's -- the analytics go much</p> <p>16 deeper than that. I'm sorry.</p> <p>17 BY MR. RAGAIN:</p> <p>18 Q. Explain them to me because --</p> <p>19 A. I need -- I need a lot more time than time in</p> <p>20 here today to do that. It's a lot more -- it's not my</p> <p>21 business, by the way, for one, so I don't know -- that's</p> <p>22 not my business. I don't work in that geography, so</p> <p>23 you're asking me about his business, I don't know about</p> <p>24 his business.</p> <p>25 Q. Let's talk about your business?</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
105-108

<p style="text-align: right;">Page 105</p> <p>1 A. Okay.</p> <p>2 Q. Why is it that distributors are able to buy</p> <p>3 PBC product in PBC territories so much cheaper than it</p> <p>4 is being sold by independent bottlers in their</p> <p>5 territories?</p> <p>6 MR. QUINN: Object to the form of the</p> <p>7 question. Lack of foundation.</p> <p>8 THE WITNESS: I don't know -- I don't know</p> <p>9 what set of facts you're referring to.</p> <p>10 BY MR. RAGAIN:</p> <p>11 Q. You're not aware, as we sit here today,</p> <p>12 that -- that you can buy PBC bottle and can CSD products</p> <p>13 in, for example, PBC territories in the southeast and</p> <p>14 other places, 22 other places, in fact, pay the money to</p> <p>15 ship those to North Dakota and still make a profit and</p> <p>16 still charge less than what Mr. Gokey is selling them</p> <p>17 for?</p> <p>18 What -- what factors would be present in those</p> <p>19 PBC territories that would cause the prices to be so</p> <p>20 cheap?</p> <p>21 MR. QUINN: Object to the form of the</p> <p>22 question. Lack of foundation.</p> <p>23 THE WITNESS: Well --</p> <p>24 MR. RAGAIN: If he doesn't know, he can tell</p> <p>25 me.</p>	<p style="text-align: right;">Page 107</p> <p>1 thing. This is a -- a system thing and we -- we, in</p> <p>2 some territories, have more. There's a luxury, if he's</p> <p>3 got not to worry about Coke in his market, he or she</p> <p>4 bottler, fantastic, that's great, I'm really happy for</p> <p>5 you.</p> <p>6 In this market, the competitive landscape is</p> <p>7 dynamic and we have to be sensitized of that. And</p> <p>8 that's what, when you put that in a mixing bowl, drives</p> <p>9 a lot of the decisions are made with pricing. Sure the</p> <p>10 higher the price, the more money you make. We would</p> <p>11 love to be, everybody would be love to be priced as high</p> <p>12 as they possibly could be. But the fact is, we have</p> <p>13 competitors who don't look at it the same way, who will</p> <p>14 take our business from us in a heartbeat, if we allow</p> <p>15 them to and it's our jobs to defend our business</p> <p>16 responsibly while also holding the policies that the</p> <p>17 companies outline for us.</p> <p>18 Q. Do you believe that the local competitor in --</p> <p>19 that Mr. Gokey has in North Dakota or that Northern</p> <p>20 Bottling has, is working less hard to beat Northern</p> <p>21 Bottling or Pepsi in -- in that territory than -- than</p> <p>22 your competitors are in your territories?</p> <p>23 MR. QUINN: Object to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: I -- I can't make that assertion</p>
<p style="text-align: right;">Page 106</p> <p>1 MR. QUINN: Well, I can object to your</p> <p>2 question. That's what I did, Jim.</p> <p>3 THE WITNESS: Yeah, I'm trying to follow your</p> <p>4 much, much cheaper -- but I'll go back to, I talked</p> <p>5 a lot about pricing. I talked a lot about the</p> <p>6 complexity in the market that happens and bottlers</p> <p>7 all have their right to set the pricing of their</p> <p>8 marketplace.</p> <p>9 BY MR. RAGAIN:</p> <p>10 Q. Including PBC?</p> <p>11 A. Including PBC. And we also have to recognize</p> <p>12 there is a -- there are competitors who want to go after</p> <p>13 our business day in and day out. So it's not just me</p> <p>14 looking at, well, where is a PBC price in this geography</p> <p>15 and where is an IB price in this geography and making</p> <p>16 assumptions on that. There is a local competitor that</p> <p>17 is trying to go after our -- the business in this</p> <p>18 marketplace and it's our job to go out and defend,</p> <p>19 responsibly defend our position in the marketplace that</p> <p>20 we compete in. No different than what the IBs try to go</p> <p>21 do in their markets.</p> <p>22 With that, you are going to have different</p> <p>23 prices. I would imagine there is IB markets where the</p> <p>24 pricing is lower than the pricing in Northern Bottling</p> <p>25 situation. So it's not just a -- it's not just a PBC</p>	<p style="text-align: right;">Page 108</p> <p>1 at all one way or the other.</p> <p>2 BY MR. RAGAIN:</p> <p>3 Q. In the context of this case, have you ever</p> <p>4 asked anybody about that?</p> <p>5 A. About the Coke -- about the way the Coke</p> <p>6 bottler is operating his territory?</p> <p>7 Q. Sure.</p> <p>8 A. No, I haven't.</p> <p>9 Q. I'm sure you've seen bad Coke competitors,</p> <p>10 right? In certain territories there might be a weak</p> <p>11 Coke competitor by your standards?</p> <p>12 A. Compared to the strongest ones, perhaps, yes.</p> <p>13 Q. Perhaps or yes, which is it?</p> <p>14 MR. QUINN: Well, object to the form of the</p> <p>15 question. Argumentative.</p> <p>16 MR. RAGAIN: It's my job.</p> <p>17 MR. QUINN: No, it's not.</p> <p>18 THE WITNESS: Again, it's all relevant. I</p> <p>19 don't -- you know, you say "weak," weak compared to</p> <p>20 what? I mean, the trademark --</p> <p>21 BY MR. RAGAIN:</p> <p>22 Q. So you're telling me --</p> <p>23 MR. QUINN: Let him finish his answer.</p> <p>24 MR. RAGAIN: You stick that finger up again,</p> <p>25 it's going to get struck by lightning, Tom.</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
109-112

Page 109	Page 111
<p>1 MR. QUINN: Now, the witness is in the middle 2 of an answer, Jim. You interrupted. Let the 3 witness finish his answer.</p> <p>4 BY MR. RAGAIN:</p> <p>5 Q. Go ahead.</p> <p>6 A. I forgot what I was --</p> <p>7 MR. RAGAIN: Would you read it back, Ms. Court 8 Reporter?</p> <p>9 (The requested portion of testimony was read 10 back by the reporter.)</p> <p>11 THE WITNESS: I'm sorry, now I've, like, lost 12 track of what I was --</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. In your experience, have you seen independent 15 Pepsi bottlers that are better marketers in their 16 territories than other Pepsi bottlers are?</p> <p>17 A. Some bottlers stand out greater than others, 18 yes.</p> <p>19 Q. How about with respect to Coke bottlers or 20 distributors in their territories? Have you seen 21 stronger ones and weaker ones?</p> <p>22 A. I've seen stronger ones than the base, yes.</p> <p>23 Q. And are all of the -- how many PBC territories 24 are there, Mr. Lewis?</p> <p>25 A. We have eight U.S. regions and approximately</p>	<p>1 Q. You've won the majority of the markets?</p> <p>2 A. We have won -- we have outperformed in the 3 majority of our markets, so that would be 31 or more.</p> <p>4 Q. Wouldn't that allow you, all other things 5 being equal, to raise the price of -- of bottle and can 6 CSD products in those territories?</p> <p>7 MR. QUINN: Objection. Lack of foundation.</p> <p>8 THE WITNESS: I -- that I cannot -- like, I 9 can't even make a case. Just because you have a 10 market, you -- you're executing better, how that 11 leads to you be able to -- no, this is -- they're 12 out for our blood in these markets and it's our job 13 to defend our -- our business responsibly, 14 effectively day in and day out. So we don't want 15 to give an inch. We tell our people, don't give an 16 inch to Coke. Go out there and fight to keep 17 business, to get new business so that we can grow 18 our sales and our profits responsibly year in and 19 year out and do it within all the confines of 20 the -- the policies that have been outlined to you.</p> <p>21 BY MR. RAGAIN:</p> <p>22 Q. Generally speaking, what factors would exist 23 in a marketplace in a territory that would allow an 24 independent bottler such as Northern Bottling to charge 25 a higher price for their bottle and can CSD products?</p>
<p>1 60 operating markets within those eight regions.</p> <p>2 Q. I'm sorry, 60?</p> <p>3 A. Sixty.</p> <p>4 Q. Okay. Are all 60 of those, by your standard, 5 beating their competitors in their territories?</p> <p>6 A. If I use marketshare as a data point, I would 7 say no, there's opportunities out there. So the answer 8 is no, they're not all beating -- all 60 are not beating 9 the --</p> <p>10 Q. How many are and how many aren't, by your 11 standards?</p> <p>12 A. Mixed.</p> <p>13 Q. That goes without saying, if -- if they're not 14 all doing one way or the other, sir.</p> <p>15 How many are and how many aren't?</p> <p>16 MR. QUINN: Objection.</p> <p>17 THE WITNESS: Yeah, this -- I mean, is your 18 question in the last three months? Is it in the 19 last year? Is it in the last five years? I mean, 20 it's -- we look at the business in -- in many 21 different ways, so the question is, was it 22 yesterday?</p> <p>23 BY MR. RAGAIN:</p> <p>24 Q. Last five years.</p> <p>25 A. We've won the majority of the markets.</p>	<p>1 A. Marketshare -- marketshare is -- is -- you 2 know, certainly is a big one. Portfolio advantage, we 3 get ties into marketshare. Brand equity, you know, the 4 healthier brands play a role. So to me, it goes back to 5 portfolio strength and healthier portfolio.</p> <p>6 Q. And does the --</p> <p>7 A. Compared to your competition, by the way. I'm 8 sorry, I didn't mean to cut you off.</p> <p>9 Q. Yeah.</p> <p>10 Does the quality of the job of the independent 11 bottler factor into how much marketshare they enjoy?</p> <p>12 A. It plays a role in everybody's ability to 13 assist with the portfolio strength, yes.</p> <p>14 Q. Has PBC, sir, set its sales goals too high at 15 times so that the transshipment of Pepsi B and C CSD 16 products into the exclusive territories of independent 17 bottlers is encouraged?</p> <p>18 A. Never.</p> <p>19 Q. Have you ever heard anyone that works for PBC 20 or PepsiCo make that assertion?</p> <p>21 A. No.</p> <p>22 Q. Do you know whether anyone at PepsiCo or PBC 23 is currently looking at revising sales goals numbers as 24 a way to disincentivize the fact that PBC is the largest 25 source of transshipped product in the territories of</p>
	<p>Page 110</p> <p>Page 112</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
113-116

<p style="text-align: right;">Page 113</p> <p>1 independent bottlers?</p> <p>2 A. No, I've not heard that.</p> <p>3 Q. What are some of the ways that PBC uses to</p> <p>4 increase or attempt to increase its marketshare in a</p> <p>5 territory where perhaps it's not as strong as you think</p> <p>6 it should be?</p> <p>7 A. Brand building, innovation, execution.</p> <p>8 Q. Okay. What's brand building?</p> <p>9 A. Marketing, it's marketing, local marketing.</p> <p>10 Q. Making the product more available, would that</p> <p>11 be part of brand building?</p> <p>12 A. Making it more relevant for the consumers that</p> <p>13 are in the marketplace, yeah. Using, you know, for</p> <p>14 example, here we're affiliated with the Orlando Magic,</p> <p>15 so throughout the year you create programs with the</p> <p>16 Orlando Magic in the community to help draw people</p> <p>17 closer in your portfolio, so that gives us an advantage</p> <p>18 with retailers during the NBA season where they would</p> <p>19 promote Orlando Magic/PepsiCo together and it gives us</p> <p>20 an advantage at the point of sale. So that would be one</p> <p>21 example of, you know, brand building with taking your</p> <p>22 trademarks, linking them with properties and marketing</p> <p>23 them locally to make them very relevant. That's one</p> <p>24 example.</p> <p>25 Innovation, taking new products like Mountain</p>	<p style="text-align: right;">Page 115</p> <p>1 probably to chase it down faster than if it's crossing</p> <p>2 your boundaries, crossing boundaries, but it's complex</p> <p>3 either way. I don't -- I don't -- on the surface, for</p> <p>4 me to see it necessarily as -- as, you know, easier, but</p> <p>5 if I'm in a market -- I don't go -- I don't -- it's</p> <p>6 hard, but I don't walk in franchise bottling markets too</p> <p>7 often unless I'm on a specific invite or coming in. So</p> <p>8 I can only relate to when I come across it in our own</p> <p>9 territory. And again, usually we're able to -- you</p> <p>10 know, once we know where it's from, try to go back, find</p> <p>11 out what happened, usually we have a pretty quick answer</p> <p>12 and we put some resolution in place to stop it.</p> <p>13 Usually through the independent process you</p> <p>14 find out about it through the investigative loop and it</p> <p>15 takes a lot more time for it to make its way in. So you</p> <p>16 lose time from a -- from an investigative -- from a</p> <p>17 quick, sort of, standpoint, so that's the only thing, I</p> <p>18 think, that separates the two --</p> <p>19 (Brief interruption.)</p> <p>20 THE WITNESS: So I'm sorry, I've got to get</p> <p>21 back to my train of thought.</p> <p>22 I don't know if it's easier or not, but it</p> <p>23 takes less time in the PBC situations. So you feel</p> <p>24 like, at least, you're acting quicker. Because I</p> <p>25 see it, I can act on it immediately. Where in the</p>
<p style="text-align: right;">Page 114</p> <p>1 Dew Kickstart or a new tea product, knowing that you</p> <p>2 have a certain development category strength, so in this</p> <p>3 case in the southeast, tea is a highly developed</p> <p>4 category, so your ability to push a little harder and</p> <p>5 execute a little stronger gives you more leverage with</p> <p>6 the new products you bring to market. And execution is</p> <p>7 the day-in/day-out battle where you show up and you</p> <p>8 fight for display space and more cooler space and you</p> <p>9 provide great services and use that to get, you know,</p> <p>10 more opportunities to, you know, get more inventory in</p> <p>11 the -- in the stores. So those are ways that -- you</p> <p>12 know, those are certainly several of the ways to help,</p> <p>13 you know, take -- take your business and move it to</p> <p>14 another level.</p> <p>15 Q. You want to sell more, right, the bottom line,</p> <p>16 you want to sell?</p> <p>17 A. Sell more profitably, yep. That's right.</p> <p>18 Q. Is it more difficult for PepsiCo or PBC to</p> <p>19 police transshipping where PBC is the source of the</p> <p>20 transshipped product than it is to police transshipping</p> <p>21 where an independent bottler is the source of the</p> <p>22 transshipped product?</p> <p>23 A. I would think that it's -- you know, it's --</p> <p>24 it would be more difficult -- I mean, when it's -- when</p> <p>25 it's inside your boundaries, it's a little easier</p>	<p style="text-align: right;">Page 116</p> <p>1 franchise system it just -- it just takes a little</p> <p>2 bit more time because the nature of the way the</p> <p>3 process works, that's part of one of the things I,</p> <p>4 you know, wanted to recommend as a faster -- the</p> <p>5 ability to close the loop faster even through</p> <p>6 technology, a way we can find out somehow when</p> <p>7 things are found, there's some type of code that</p> <p>8 may go in a system or a portal and there are alerts</p> <p>9 or things like that, there's an app or something</p> <p>10 that we could all interact with that we would be</p> <p>11 able to find out a little faster, and we can get</p> <p>12 right back to the customer and take the corrective</p> <p>13 action and put those things in place as quickly as</p> <p>14 possible, so that we can prevent that from</p> <p>15 happening any -- any further versus maybe a number</p> <p>16 of days or weeks go by and you can have another</p> <p>17 occurrence or two. We want to try to minimize any</p> <p>18 frequency of it, so -- I don't know if I answered</p> <p>19 your question, but...</p> <p>20 Q. My -- my question was, or I intended it to be,</p> <p>21 and perhaps I didn't ask it very well, but are you</p> <p>22 saying that it should be or in your experience it is</p> <p>23 less difficult for PBC to police itself than it is</p> <p>24 for -- for PepsiCo to police the independent bottlers?</p> <p>25 A. I think the policing is about equal. It's</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
117-120

<p>1 just in my mind it's quicker. I want to get to things 2 quickly as possible, so my mind policing -- speed, to 3 me, is a part of policing. And so how we increase the 4 speed of compliance or noncompliance or the speed of 5 resolution, I think is what's real important. And 6 clearly, I think that speed today is different just 7 because of, you know, the process that's involved for 8 one system versus another system.</p> <p>9 I'd like to see the speed generally be the 10 same for both systems and -- and technology is a way, 11 hopefully, that that can -- that can create itself to be 12 faster. You know, I'm not -- we're not expecting people 13 to have to do any heavy lifting on the independent side, 14 it's just a matter of -- of -- codes are put into a 15 system or an app and that generates a level of 16 visibility and transparency for the enterprise that 17 people now can go act upon pretty quickly to problem 18 solve and resolve as fast as possible.</p> <p>19 Q. And if I understand you correctly, sir, the 20 quicker the processing of the -- of the transshipment 21 reports would or should lead to a lesser amount of 22 transshipping; is that right?</p> <p>23 A. I think it has a chance. The minute you find 24 out something, the faster you can react to it, the more 25 you will -- you'll get to the bottom of it faster, which</p>	<p>Page 117</p> <p>1 that situation, which is -- which is rare, but we come 2 across a situation, we ask a few questions inside the -- 3 where we are. We make a couple phone calls and then we 4 typically, by the end of that day or some time, you 5 know, in the next 24 to 48 hours have a pretty good feel 6 of what happened, where it happened and then we can 7 begin to put an action plan to do that.</p> <p>8 So those are -- those are my circumstances.</p> <p>9 Now, I imagine that there's a lot of people that aren't 10 reporting anything and aren't calling each other when 11 they find something. Either they don't know it's there 12 or they do it and they realize that, you know, in the 13 scheme of things it may not be worth their effort, who 14 knows what they're thinking. There are probably a 15 number of things that are going on out there. But when 16 I'm out there, I do find it quicker to at least be able 17 to get a handle on it and -- again, that's not perfect 18 either. I want technology where if I were to walk in 19 the store, I see codes that are not from the existing 20 marketplace, I go to some app or I go to some website 21 that I can drop those codes in with some information, 22 brief information, that generates visibility to the 23 enterprise that now leads to specific people addressing 24 the problem, taking it on face-on, head-on and bringing 25 quick resolution to matters.</p>
<p>Page 118</p> <p>1 means you'll either have to take consequences, 2 reprimand, cut off, whatever you have to have, but yeah, 3 the faster we get information, the faster you can react. 4 I just believe that speed is a real critical -- a real 5 critical point here on us. And I think technology has 6 to play a role in this and I think that's what the 7 system is trying to -- this Blue Council is trying to 8 work on, is how do we create technological advancements 9 that help the speed of resolution, speed of information, 10 speed of resolution with this process so that we can, 11 you know, act faster on both ends. I mean, this is not 12 just PBC to independents. It could be PBC to PBC. It 13 could be independents to independents. It could 14 be independents to PBC. It could work holistically, not 15 just, you know, one versus the other.</p> <p>16 Q. Just so I'm clear, where do you believe now 17 the -- the communication is quicker? With PBC to PBC?</p> <p>18 A. From my own, it's -- the only reason I believe 19 it's quicker is that if I see product in a market, you 20 could pick up a phone and call somebody like that and 21 say, hey, I found a few cases, you ask a few questions, 22 for the most part you can get a -- not in all cases. 23 Not in all cases because again, I'm not in every market 24 every day to know what people are finding. But 25 generally, when I'm in the market and we come across</p>	<p>Page 119</p> <p>Page 120</p> <p>1 Q. Mr. Lewis, for the past five years, who has 2 been the person at PBC most responsible, in your view, 3 for addressing the fact that PBC is the largest source 4 of transshipped product?</p> <p>5 MR. QUINN: Object to the form of the 6 question.</p> <p>7 THE WITNESS: I don't know if there is a 8 single person. I think it's a collective team. 9 Everybody on the North America Beverage team that 10 reports in to Kirk Tanner is responsible for sales 11 has vested interest in resolving this problem and 12 addressing this problem. So I look at it as a 13 horizontal group of executives who all have skinned 14 the game on getting this resolved and there are 15 various functions that have pieces of helping to 16 solve, but holistically, you know, there -- 17 everybody that sits on Kirk Tanner's team 18 essentially is responsible for this topic.</p> <p>19 BY MR. RAGAIN:</p> <p>20 Q. And who are those persons in the last five 21 years?</p> <p>22 A. It would be myself. It would be -- 23 (Brief interruption.)</p> <p>24 MR. RAGAIN: That's my phone. It will stop. 25</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICOJune 19, 2017  
121-124

<p style="text-align: right;">Page 121</p> <p>1       THE WITNESS: Okay.</p> <p>2 BY MR. RAGAIN:</p> <p>3       Q. Who are those people?</p> <p>4       A. Myself, Anne Fink, Rich Tompkins, Kirk Tanner,</p> <p>5       those are mainly the sales executives that are in play</p> <p>6       here.</p> <p>7       Q. Mr. Lewis, would you agree that if a bottler</p> <p>8       is doing a good job of enforcing the transshipment</p> <p>9       rules, that bottler's percentage of transshipment fines</p> <p>10       would be roughly proportionate to the percentage of</p> <p>11       sales that that bottler enjoys?</p> <p>12       MR. QUINN: Object to the form of the</p> <p>13       question. Lack of foundation.</p> <p>14       THE WITNESS: Yeah, I don't know I necessarily</p> <p>15       would -- would agree. I don't believe that's</p> <p>16       the -- you certainly could look at it that one way,</p> <p>17       but I wouldn't necessarily look at it that way.</p> <p>18       Again, there's various degrees of complexity that</p> <p>19       exist throughout the footprint of the country and</p> <p>20       one bottler -- you could argue -- you could argue</p> <p>21       the other way. In a low complex environment, you</p> <p>22       could argue bottler would be way lower than their</p> <p>23       fair share in some cases. And in some cases where</p> <p>24       there's a greater degree of complexity, higher, but</p> <p>25       I would say that most of this problem, again, sits</p>	<p style="text-align: right;">Page 123</p> <p>1 geography is certainly more, you know, subject to the</p> <p>2 type of things we've been talking about today than</p> <p>3 others to a greater -- just to a greater extent. And so</p> <p>4 therefore, we've got to work harder certainly in</p> <p>5 those -- all markets, but certainly in that territory</p> <p>6 where that seems to be the biggest problem for us by and</p> <p>7 large. It has been for -- for years.</p> <p>8       Q. Well, first of all, would you agree with me</p> <p>9       that the transshipment problem that Northern Bottling is</p> <p>10       facing is every bit as important to PBC and PepsiCo as</p> <p>11       the transshipment problem faced by any independent</p> <p>12       bottler in the northeast?</p> <p>13       A. One hundred percent of the transshipment</p> <p>14       challenges that occur absolutely are a problem, all a</p> <p>15       big problem.</p> <p>16       Q. Would you characterize Northern Bottling's</p> <p>17       territory as a less complex or a low complex</p> <p>18       territory --</p> <p>19       A. I don't know enough about the market to make</p> <p>20       that determination one way or the other. I don't have</p> <p>21       enough information on that geography.</p> <p>22       Q. Do you believe, generally speaking, that --</p> <p>23       that a territory in North Dakota would be less complex</p> <p>24       than any of the PBC territories that you're in charge</p> <p>25       of?</p>
<p style="text-align: right;">Page 122</p> <p>1       in the northeast. A significant amount of it sits</p> <p>2       in the northeast where, no surprise, there's the</p> <p>3       most complexity.</p> <p>4       So I think the complexity links directly to</p> <p>5       percentages here, high degree of complexity, high</p> <p>6       degree of problem. Low degree of complexity</p> <p>7       environments, low degree of problem.</p> <p>8 BY MR. RAGAIN:</p> <p>9       Q. Describe a low complex territory for me.</p> <p>10       A. One -- so in this case, we talked about all</p> <p>11       the factors that go in. You may not have a -- a large</p> <p>12       network of these type of operators in the market, for</p> <p>13       one. You may have just a lower number of distributors</p> <p>14       in the market. The distributor sizes can vary in</p> <p>15       certain markets. Your pricing structure could vary.</p> <p>16       The things -- whereas bottle bills or taxes varies a lot</p> <p>17       throughout the footprint of the country. So it's</p> <p>18       just -- it's not one single thing to say low complex or</p> <p>19       noncomplex. Everybody has complexity, so I don't</p> <p>20       certainly mean to suggest there's no complexity. But</p> <p>21       let's face it, the northeast has a much higher degree of</p> <p>22       complexity even amongst the independent bottlers up</p> <p>23       there. They face the same battles that my guys do up in</p> <p>24       that geography. It's just a -- it's a complex</p> <p>25       geography. It is -- just always has been. And that</p>	<p style="text-align: right;">Page 124</p> <p>1       A. I don't --</p> <p>2       MR. QUINN: Objection to the form of the</p> <p>3       question.</p> <p>4       THE WITNESS: Yeah, I don't -- I can't make</p> <p>5       that determination either. What I would -- what I</p> <p>6       would say on the surface is that most of those</p> <p>7       territories, outside of northeast, have less</p> <p>8       complexity to deal with in this case of source</p> <p>9       product moving from authorized to unauthorized.</p> <p>10       The northeast has greater complexity than most of</p> <p>11       the other geographies in the U.S.</p> <p>12 BY MR. RAGAIN:</p> <p>13       Q. Why?</p> <p>14       A. We talked about some of these things. We</p> <p>15       talked about competitors. We talked about bottle bills.</p> <p>16       You've got taxes now that are out there. There are a</p> <p>17       number of things that are just inherently more</p> <p>18       complicated in that corridor than they are in other</p> <p>19       parts of the country. Not that those parts don't exist</p> <p>20       in other places, you know, but in that corridor --</p> <p>21       that's a historical thing. That's not something that I</p> <p>22       created. We have to deal with that reality. We care</p> <p>23       about all the transshipment that goes on throughout the</p> <p>24       country. We care about it happening at Northern</p> <p>25       Bottling. We care about it happening wherever it</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
125-128

<p>Page 125</p> <p>1 happens. But most of the problem is centralized in 2 the -- in the northeast. And if we could -- we can 3 knock it out everywhere and do it overnight, we'd love 4 to do it. We'd absolutely be a fan of it because it 5 hurts our P and L.</p> <p>6 Our guys wake up every day and when those 7 fines come through, they're frustrated. It hurts their 8 performance. It's a morale booster [sic] and we know we 9 lose business because we've got to go back and basically 10 reprimand the customer or execute consequences. So it's 11 a negative for everybody when we wake up. So no matter 12 who gets the fines, people are unhappy with the nature 13 of this challenge that we have in our business.</p> <p>14 Q. Am I correct, am I understanding you correctly 15 that it's -- it's more difficult to prevent 16 transshipping in a complex territory as opposed to a 17 noncomplex territory?</p> <p>18 A. I don't -- I don't know if I would say it's -- 19 what I would say is that, when you have a -- the more 20 complexity, the more challenging it can become. It 21 doesn't mean that's it not challenging everywhere. I 22 don't -- there's not one place I would say they ain't 23 got to worry about it. It's easy. You wake up every 24 day, you don't have any problems. There's not one 25 geography in the country and I could -- I could speak</p>	<p>Page 127</p> <p>1 transshipment rules, that every bottler's percentage of 2 transshipment fines would be roughly proportionate to 3 their percentage of the sales that they enjoy?</p> <p>4 MR. QUINN: Object to the form of the 5 question.</p> <p>6 BY MR. RAGAIN:</p> <p>7 Q. For example, I can give you an example, if 8 you'd like.</p> <p>9 If -- if Northern Bottling, or another 10 independent bottler, has, let's say, five percent of the 11 B and C sales in the United States, wouldn't you expect, 12 if they're doing a good job, that their share of 13 transshipment fines out of the total fines would be 14 five percent or less?</p> <p>15 MR. QUINN: Object to the form of the 16 question.</p> <p>17 THE WITNESS: I -- I can't -- I can't 18 generally make that statement. The businesses are 19 all different. Marketshares are different. 20 Complexities are different. It could be a case 21 where his could be higher for some reason. I 22 don't -- I'm not here to say his -- should be on 23 the average --</p> <p>24 BY MR. RAGAIN:</p> <p>25 Q. My question is: If it's lower --</p>
<p>Page 126</p> <p>1 for IBs, probably, on that matter too. Nobody wakes up 2 every day and has it easy. Everybody's got it tough. 3 Some geographies have it tougher than others 4 for circumstances that we talked about, marketshare, 5 pricing competitiveness, key competitors, regulatory 6 things that are in place that -- that were, you know, in 7 place for years and years at a time and when you start 8 adding more and more of those things in play, you know, 9 I'll even look at the Philadelphia thing where -- the 10 tax situation, that absolutely inherently adds another 11 level of complexity to that market that most other 12 markets don't have to deal with.</p> <p>13 Now Cook County, Chicago has got to deal with 14 that. Now Seattle is going to have to deal with that, 15 so this thing is, you know, adding another level of 16 complexity to the marketplace that we have to be 17 sensitized to so that we can assure that, number one, we 18 still have a right to do business and do it in a 19 competitive way and still win. But also, not ensure 20 that, you know, it gets off track on some of the 21 policies that we're trying to execute against to protect 22 and defend our business as well as our independent 23 bottlers' businesses.</p> <p>24 Q. Generally speaking, Mr. Lewis, would you 25 expect if everyone is doing a good job of enforcing the</p>	<p>Page 128</p> <p>1 MR. QUINN: Let him finish his answer, please, 2 Jim.</p> <p>3 MR. RAGAIN: I don't want him to rephrase the 4 question.</p> <p>5 BY MR. RAGAIN:</p> <p>6 Q. I'm just trying to save you some time, Mr. 7 Lewis. So I apologize.</p> <p>8 A. Can I talk?</p> <p>9 Q. I would -- I would like you to answer the 10 question I asked --</p> <p>11 MR. QUINN: Well, he was.</p> <p>12 BY MR. RAGAIN:</p> <p>13 Q. -- not create a different one. And I'm trying 14 to do it so you can get out of here. That's up to you 15 and Mr. Quinn.</p> <p>16 MR. QUINN: And it is true that he gets to 17 finish his answer.</p> <p>18 Please go ahead.</p> <p>19 THE WITNESS: It feels like you want me to 20 answer whether or not his should be on the average 21 or not and my -- my point back is, I don't 22 feel good about answering that question because 23 there's so many things that come into play that 24 could make it higher on the average or lower. I 25 don't think -- I don't think you can look at this</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
129-132

<p style="text-align: right;">Page 129</p> <p>1 as something that could be spread like a peanut 2 butter approach. I just don't. I think it is a 3 far more complex issue. Just like marketshare, do 4 I -- if I wake up and everybody does the same job 5 and everybody goes after it and fights with 6 tenacity in the market, would their marketshares be 7 the same? Well, no. There's different degrees of 8 things that go into play that marketshare is going 9 to be different around the country or profits or 10 sales, for that matter.</p> <p>11 If -- you know, I'm sorry, I don't -- I 12 can't -- I'm not trying to be evasive. I just 13 don't feel good about saying, well, yeah, generally 14 that should be the case. I don't -- I don't feel 15 good about answering it that way.</p> <p>16 BY MR. RAGAIN:</p> <p>17 Q. I appreciate that.</p> <p>18 Now, do you know -- and -- and I -- I really 19 do apologize, is it senior vice president of --</p> <p>20 A. Field operations.</p> <p>21 Q. -- field operations?</p> <p>22 As the senior vice president of field 23 operations for Pepsi Bottling Company --</p> <p>24 A. Beverage Company.</p> <p>25 Q. Beverage Company.</p>	<p style="text-align: right;">Page 131</p> <p>1 territories with more complexity to them, one of the 2 things you mentioned was perhaps they don't have these 3 types of customers.</p> <p>4 What -- what were you referring to when you 5 said "these types of customers"?</p> <p>6 A. I'm sorry if I said it that way. What I meant 7 is the amount or scale of distributors in the market 8 varies geography to geography. There's not necessarily 9 the same -- you know, even in Florida, for example, 10 South Florida has a greater concentration of 11 distributors than, let's say, Central Florida, so that's 12 what I meant by that.</p> <p>13 Q. And what do you mean by "distributors," sir?</p> <p>14 A. The 3PO, third-party operators.</p> <p>15 Q. And am I correct that third-party operators 16 are where the problem lies more than with other kinds of 17 customers in terms of diverting product out of the 18 territories?</p> <p>19 A. On the surface -- yeah, most -- most of the 20 situations, again, where you sell to -- yeah, 21 third-party operator, the -- the likelihood of moving 22 product from an area authorized to unauthorized, there's 23 a -- there's a greater, certainly, risk of that than, 24 let's say, a Wal-Mart, yes.</p> <p>25 Q. So what is a third-party operator? Can you</p>
<p style="text-align: right;">Page 130</p> <p>1 Has PBC or PepsiCo ever studied that 2 relationship between --</p> <p>3 MR. QUINN: Object to the form.</p> <p>4 BY MR. RAGAIN:</p> <p>5 Q. -- between the sales that a given bottler 6 enjoys and their percentage of transshipment fines?</p> <p>7 MR. QUINN: Object to the form of the 8 question.</p> <p>9 THE WITNESS: I have not seen any analysis 10 done in that manner. It doesn't mean that it's 11 not -- has not been done. I've not personally seen 12 it or been part of any conversations discussing it.</p> <p>13 BY MR. RAGAIN:</p> <p>14 Q. At any time since you've been employed by 15 PepsiCo, has PepsiCo, PBC or PepsiCo Food Service ever 16 sold PepsiCo bottle and can CSD products directly to 17 Core-Mark?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Has -- same question, but -- and with respect 20 to the same period of time, but has Core-Mark, to your 21 knowledge, ever distributed bottle and can products 22 under any kind of an arrangement with PepsiCo?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. I apologize for going back, but when we were 25 talking about the low complexity territories and perhaps</p>	<p style="text-align: right;">Page 132</p> <p>1 give me an example or some examples --</p> <p>2 A. We sell --</p> <p>3 Q. -- of third-party operators?</p> <p>4 A. -- well, Canteen. These are people that 5 operate vending machines for us and they'll have -- 6 they'll have the -- the bid for the office buildings. 7 So Canteen was awarded for -- making it up, awarded the 8 vending contract for this facility. The owner facility 9 said you can't -- you guys, individually, can't decide 10 who goes in here. We decide who goes in here. As a 11 licensee, we're going to award that contract to Canteen. 12 Canteen, in turn, then has the business here for food 13 and for beverages and they decide from a beverage 14 standpoint who they want to leverage in this facility. 15 So we sell them product. They in turn put it 16 on their vending routes and they sell it through their 17 vending machines or if this was a hospital, through a 18 servery. If it was an airport, through the concessions. 19 So a number of different ways to resell the product, but 20 product goes to them and then product goes directly to a 21 consumer through vending or through a retail price 22 point. 23 Q. But if you've identified third-party 24 distributors or operators as more likely than other 25 types of customers to create diversion or</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
133-136

<p style="text-align: right;">Page 133</p> <p>1 transshipment --</p> <p>2 A. Yeah.</p> <p>3 Q. -- why sell to them at all?</p> <p>4 A. Because I want the business in the office</p> <p>5 building and I want the business at the airport and I</p> <p>6 want the business in the hospital. I want that</p> <p>7 business.</p> <p>8 Q. Thank you.</p> <p>9 How many employees do you have at PBC?</p> <p>10 A. There are 48,000.</p> <p>11 Q. If there are independent bottlers -- well,</p> <p>12 first let me ask you: Are there regions within PBC that</p> <p>13 are larger sources of transshipped products than other</p> <p>14 regions? In other words, could you give me a ranking?</p> <p>15 A. Northeast.</p> <p>16 Q. Okay. And then who would be second?</p> <p>17 A. Northeast would be number one by a long shot.</p> <p>18 From there, probably southeast. And after that, pretty</p> <p>19 low. I mean, you're talking about -- you know, I'm</p> <p>20 talking about small amounts.</p> <p>21 Q. So the common denominator is the half of the</p> <p>22 country where Mr. Quinn lives.</p> <p>23 MR. QUINN: Actually I live in the midwest,</p> <p>24 the great midwest.</p> <p>25 BY MR. RAGAIN:</p>	<p style="text-align: right;">Page 135</p> <p>1 system as a whole.</p> <p>2 Q. My question, I hoped, was: Have you ever</p> <p>3 personally called any bottlers and said, how do you do</p> <p>4 it, how do you keep from paying transshipping fines?</p> <p>5 A. I have.</p> <p>6 Q. And who would those be?</p> <p>7 A. Buffalo Rock, worked with them very closely.</p> <p>8 Q. Who did you speak with there?</p> <p>9 A. Matthew Dent and Warren Austin. In the</p> <p>10 Carolinas, GMA. There are many, you know, executives,</p> <p>11 Pepsi Bottling, PBV or CCI --</p> <p>12 Q. Now, what's PBV? I'm sorry.</p> <p>13 A. Pepsi Bottling Ventures.</p> <p>14 Q. Is this a company-owned or --</p> <p>15 A. No, franchise.</p> <p>16 Q. -- a franchise.</p> <p>17 A. Yeah, it's independent. Yeah.</p> <p>18 So I've dealt with -- you know, again, the</p> <p>19 nature of my job in -- in those markets with those</p> <p>20 executives from territories that run right up against</p> <p>21 RSI, which is up in Tallahassee, is another group that I</p> <p>22 spent time with in trying to, again, resolve the --</p> <p>23 resolve the problems that we had, you know, over the</p> <p>24 years that we tried to just communicate and the</p> <p>25 watch-outs, and hey, we heard this guy is opening up a</p>
<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. So have you ever thought to call</p> <p>2 Mr. Gokey or other bottlers like him that enjoy</p> <p>3 virtually zero in transhipment fines and say, we should</p> <p>4 do it like you do it, how do you do it?</p> <p>5 Have you thought about doing that?</p> <p>6 A. I think that -- that exists with the Blue</p> <p>7 Council System right now.</p> <p>8 Q. And that was started a year ago?</p> <p>9 A. Yeah. And I think before that, it was more</p> <p>10 informal than formal. Now, it's more formal, then it</p> <p>11 was less informal. It was certainly more -- less formal</p> <p>12 and yeah, those -- you would sit and have those</p> <p>13 conversations. The Carolinas group was very passionate</p> <p>14 about the topic. We partner with them a lot. I know</p> <p>15 they talk about it in the northeast. What's a real big</p> <p>16 issue for not just us, but every- -- I mean, all the</p> <p>17 operators up there have to deal with the challenge.</p> <p>18 So we have. I think it's that -- those</p> <p>19 conversations were much more GMA centric before. Now --</p> <p>20 you know, now the council has it they're going to be</p> <p>21 more national and you're going to have a very good</p> <p>22 cross-section of bottlers that have the problems versus</p> <p>23 bottlers that don't have pretty clean environments,</p> <p>24 so getting the input in the collaboration from the</p> <p>25 entire group, it should be a plus for the -- for the</p>	<p style="text-align: right;">Page 136</p> <p>1 new business, you know, let's put a watch out for him.</p> <p>2 So they were proactive -- all the conversations weren't</p> <p>3 just reactive conversations on, hey, we found product.</p> <p>4 There were conversations even around people opening up</p> <p>5 new businesses in the geographies and we all just wanted</p> <p>6 to make each other aware that hey, here's some new folks</p> <p>7 in town. Let's be on the lookout for things that may --</p> <p>8 may come up that we need to be aware of.</p> <p>9 So it was very much a collaborative</p> <p>10 relationship in that regard and I think we've got to</p> <p>11 keep doing that, plus use the best of this council to</p> <p>12 extend out greater ideas from the entire system, not</p> <p>13 just the people that are affected.</p> <p>14 Q. Now, were these bottlers that you just spoke</p> <p>15 of in that fairly lengthy answer, were these all</p> <p>16 bottlers that you identified as good examples in terms</p> <p>17 of paying low transhipment fines, and so you wanted to</p> <p>18 find out how they did things to keep their product out</p> <p>19 of other bottlers' territories?</p> <p>20 A. It was a combination. Yeah, it was that and</p> <p>21 there also were -- I mean, they're business partners, so</p> <p>22 how do you learn from what they do, how do you learn</p> <p>23 from how to communicate better, how you learn from</p> <p>24 information that some of their people are getting on the</p> <p>25 ground to -- to help stem some of the issues that were</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
137-140

<p style="text-align: right;">Page 137</p> <p>1 going on. It was all of the above. But yeah, part of 2 it was, let's talk about the things that are going on 3 that you guys see that we can sort of adopt as best 4 practice. Best practice sharing is absolutely a 5 critical piece of this, yes.</p> <p>6 Q. So could you tell me which of those bottlers, 7 that you sought out for that advice, gave you some of 8 information that has helped PBC in terms of lowering 9 transshipment fines?</p> <p>10 A. Well, I'd spoken earlier about the southeast 11 having a reduction over that window of time that you 12 asked about. And a lot -- a lot of that was due large 13 in part to the ability to collaborate with those group 14 of independent bottlers in the territory and then acting 15 swiftly and responsibly in the marketplace. So there 16 was direct correlation with that collaborative work, 17 corrective action, quick action to get the fines down in 18 the Southeastern United States and direct benefit of 19 those conversations. They played a big role in helping 20 out the -- the cause.</p> <p>21 Q. Did any of these bottlers that you sought out 22 for advice have any kind policies that were different or 23 additional than what PBC has been doing over the years 24 to -- to try and cut back on transshipment fines?</p> <p>25 A. No, I didn't notice anything different about</p>	<p style="text-align: right;">Page 139</p> <p>1 source -- a producer of the largest amount of fines in 2 the system.</p> <p>3 Do you recall those questions?</p> <p>4 A. Yes.</p> <p>5 Q. Were most of those fines relating to 6 transshipments that occurred in the northeast?</p> <p>7 A. Yes.</p> <p>8 Q. Has that been true for the entire time that 9 you've been with PBC?</p> <p>10 A. Yes.</p> <p>11 Q. Mr. Ragain was also asking you about factors 12 that go into building a marketshare in the territory.</p> <p>13 Can you explain for us how important customer 14 satisfaction is in terms of building marketshare and 15 promoting the Pepsi brand?</p> <p>16 A. Well, really you can't get there without the 17 customer. The customer relationships are extremely 18 critical, especially in cases where it's a highly 19 competitive environment and your relationship with the 20 customer can give you, I'll call it, those jump balls 21 that give you more of an advantage, whether it's on 22 promotions or inventory or space, those kind of things.</p> <p>23 So if -- if, you know, you don't have a good 24 relationship with the customer, no matter what your 25 marketing or advertising is or new products are,</p>
<p style="text-align: right;">Page 138</p> <p>1 the policy. I think what was more important was 2 understanding, again, the competitive landscape they 3 were dealing with and also getting information on who 4 some of the players were in their market and making us 5 mindful of that, so we could start to easily trace back 6 relationships and -- and identify, early in the cycle, 7 where there could be a problem, we could get in front of 8 it a lot more faster than we were able to in the past.</p> <p>9 So just information sharing was -- was alone 10 highly beneficial. From a policy standpoint, it was 11 pretty consistent. In some cases, I think they actually 12 took our policy and used it, you know, maybe, and just 13 reworded it a bit, but it was our policy. So I think 14 the policy side of it felt pretty similar, but the 15 communication and -- and the intelligence that we would 16 get was -- was extremely valuable from -- from them.</p> <p>17 MR. RAGAIN: That's all I have. Thank you, 18 sir.</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. QUINN:</p> <p>21 Q. Okay. I have just a couple of quick follow-up 22 questions, Mr. Lewis.</p> <p>23 The first one really relates to this issue of 24 the northeast. A number of times, in the course of 25 Mr. Ragain's questioning, you talked about PBC being the</p>	<p style="text-align: right;">Page 140</p> <p>1 you're -- they're not going to make their way on the 2 floor if you don't have a good relationship with the 3 store manager, the assistant managers, those kind of 4 folks.</p> <p>5 Q. So is it -- is it -- is it a good practice for 6 a bottler to insist on a customer taking a certain 7 amount of shelf space when the customer doesn't want the 8 shelf space for Pepsi products?</p> <p>9 A. Say that again. Repeat the question.</p> <p>10 Q. I said, is it a good practice in terms of 11 building customer relationships for a bottler to insist 12 that a customer accept a certain amount of shelf space 13 when the customer says, no, I can't take that much?</p> <p>14 A. I think --</p> <p>15 MR. RAGAIN: Object to the form.</p> <p>16 BY MR. QUINN:</p> <p>17 Q. You can answer.</p> <p>18 A. I think you've got to sell hard as you 19 possibly can to maximize your opportunities, but at the 20 end of the day, you're going to have to come out with a 21 win/win scenario so that we're able to still grow our 22 sales and the customer is able to still grow their 23 sales. At no case would we completely walk away from 24 trying to make a customer's business work for us as long 25 as it worked for us and worked for them. We always</p>

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
141-144

Page 141	Page 143
1 strive to try to get to a win/win scenario and there's	1 (The deposition concluded at 11:53 a.m.)
2 going to be give and take in those conversations, but we	2
3 would -- we would not completely walk away because it	3
4 would just compromise our business position and they	4
5 would end up giving all that space to competition.	5
6 Q. And if the customer says, I'm -- I'm not going	6
7 to let you sell any Pepsi product if you insist on me	7
8 taking more shelf space than I want, what would you do	8
9 in that scenario?	9
10 MR. RAGAIN: Object to the form.	10
11 THE WITNESS: Say it one more time.	11
12 BY MR. QUINN:	12
13 Q. I said, if a customer tells you as a bottler,	13
14 if you insist that I take this amount of shelf space,	14
15 I'm going to stop buying product from you, what do you	15
16 do?	16
17 A. I'm going to work hard to find some common	17
18 ground so we can retain a good relationship so we can	18
19 keep -- keep product moving through to satisfy the	19
20 consumers, because I know ultimately the consumers that	20
21 are walking in their stores or his or her store to buy	21
22 our products and we're not going to let that opportunity	22
23 go by, we're going to find a way to reach a compromise	23
24 with the customer that gets us what we need and gets	24
25 them what they need.	25
Page 142	Page 144
1 MR. QUINN: No further questions.	1 CERTIFICATE OF REPORTER
2 REDIRECT EXAMINATION	2
3 BY MR. RAGAIN:	3
4 Q. I didn't ask you, Mr. Lewis, is -- is Northern	4
5 Bottling a good bottler? Has it been a good bottler	5
6 over the years?	6
7 A. I believe so, yeah. I mean, we -- we're --	7
8 yeah.	8
9 Q. Successful bottler?	9
10 A. (Nods head.)	10
11 Q. Is it known for making customers unhappy over	11
12 the years?	12
13 A. I've never heard of the reputation where they	13
14 haven't. I mean, you know, but they've been a good	14
15 bottler, yes.	15
16 MR. RAGAIN: Thank you. Nothing further.	16
17 THE WITNESS: Okay.	17
18 THE VIDEOGRAPHER: This concludes the video	18
19 recorded deposition of Derek Lewis on June 19, 2017	19
20 at 11:53 a.m.	20
21 THE COURT REPORTER: Are you having this	21
22 transcribed?	22
23 MR. RAGAIN: Yes.	23
24 THE COURT REPORTER: Would you like a copy?	24
25 MR. QUINN: Yes, please.	25

*Dayna Jones*

DAYNA JONES, FPR, Notary Public  
State of Florida at Large

DEREK LEWIS Confidential  
NORTHERN BOTTLING vs PEPSICO

June 19, 2017  
145-146

Page 145

1 DEPOSITION ERRATA SHEET  
2 Our Assignment No.: J0597746  
3 Case No.: 4:150-cv-133  
4  
5 DECLARATION UNDER PENALTY OF PERJURY  
6 I declare under penalty of perjury that I have  
7 read the entire transcript of my Deposition taken in the  
8 captioned matter or the same has been read to me, and  
9 the same is true and accurate, save and except for  
10 changes and/or corrections, if any, as indicated by me  
11 on the DEPOSITION ERRATA SHEET hereof, with the  
12 understanding that I offer these changes as if still  
13 under oath.

14 Signed on the \_\_\_\_\_ day of \_\_\_\_\_,  
15 20\_\_\_\_.

16 \_\_\_\_\_  
17 DEREK LEWIS  
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Page 146

1 DEPOSITION ERRATA SHEET  
2 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
3 \_\_\_\_\_  
4 Reason for change: \_\_\_\_\_  
5 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
6 \_\_\_\_\_  
7 Reason for change: \_\_\_\_\_  
8 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
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13 Reason for change: \_\_\_\_\_  
14 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
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20 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_  
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22 Reason for change: \_\_\_\_\_  
23  
24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
25